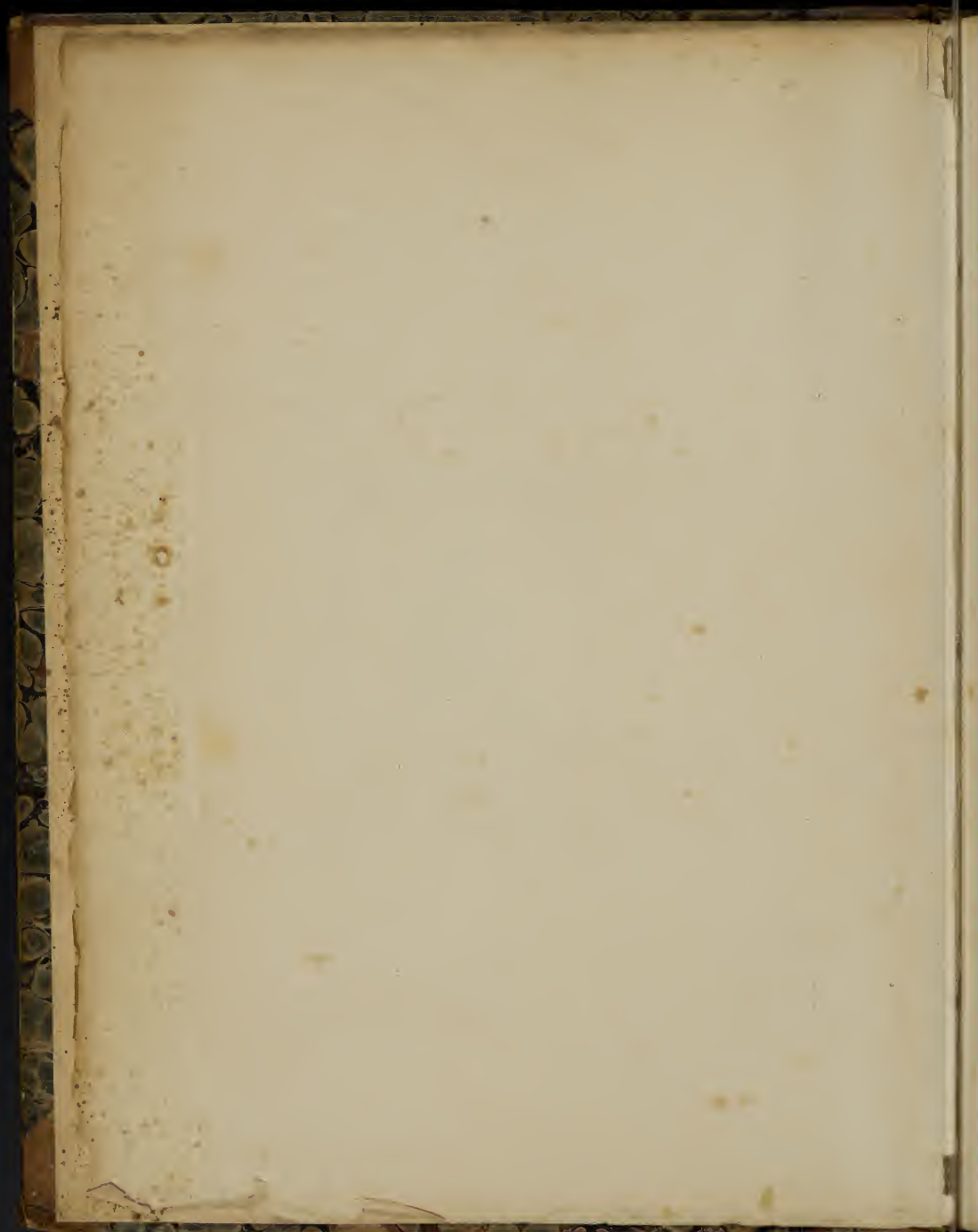
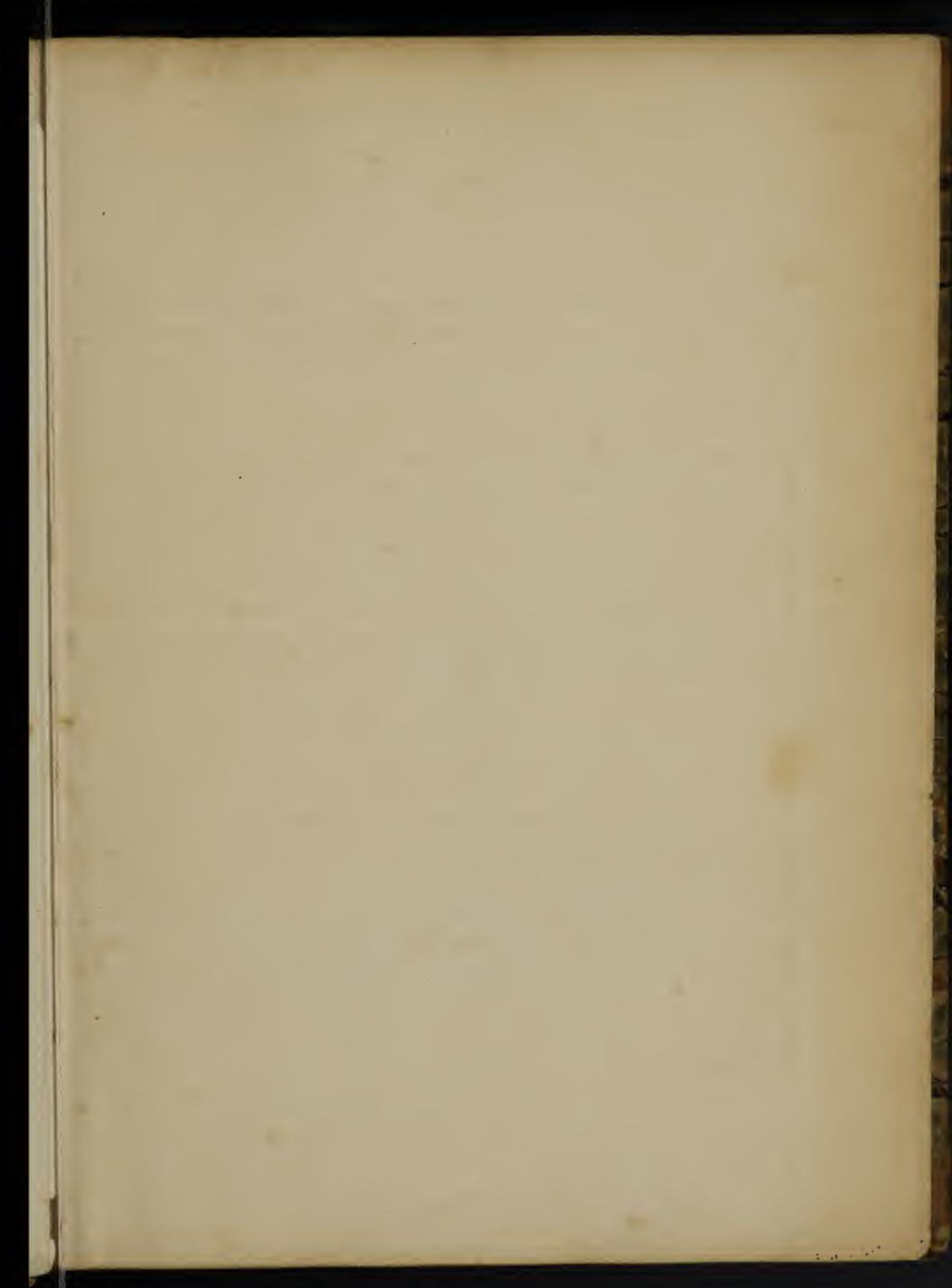


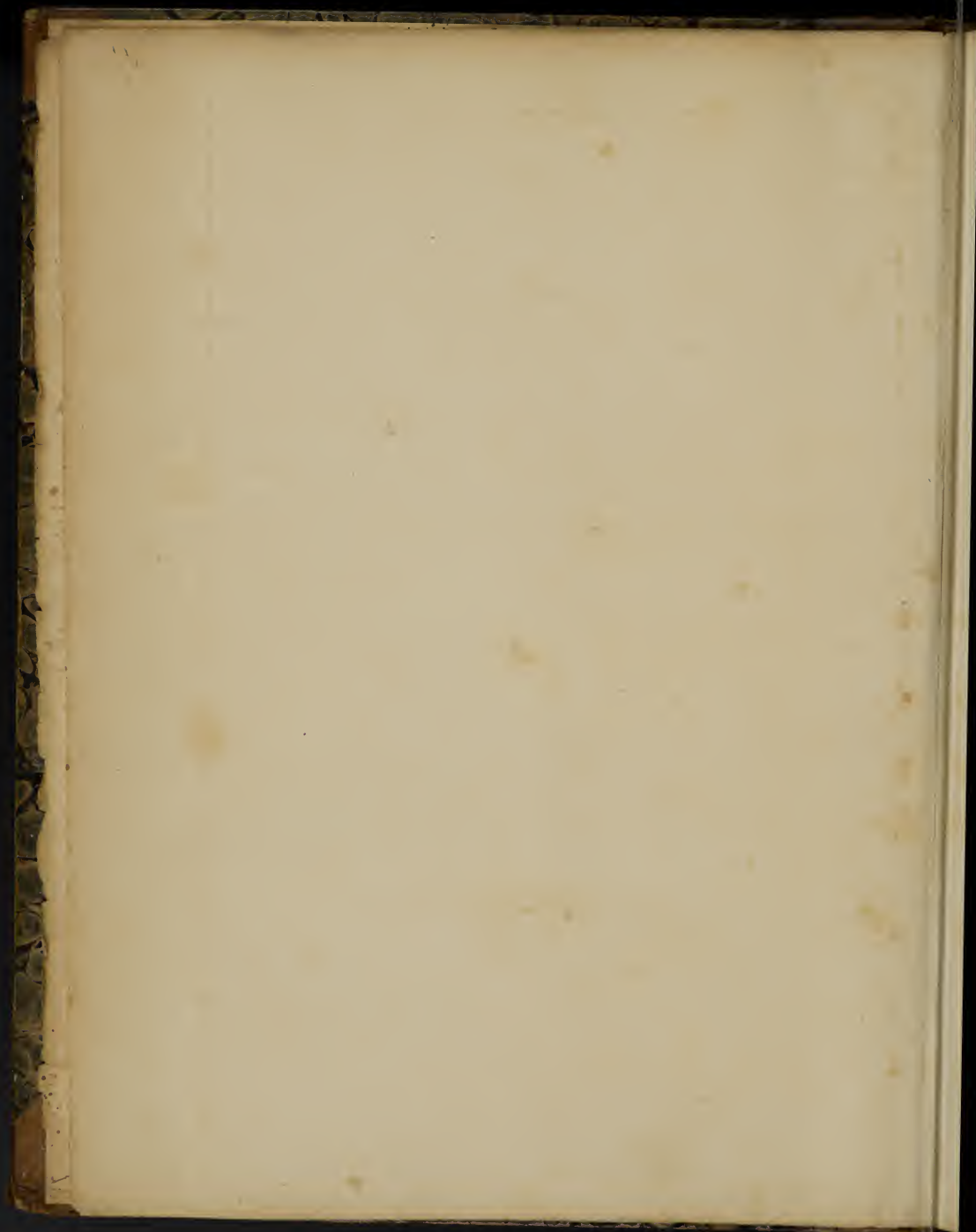
In memory of



from his wife,
Frances Lora Seymour.







Municipal Law. (Vol)

The law of nature is the unrevealed law of God as
discovered by reason

1 Bl 39

Law of nations is in genl the law of nature applied
to sovereign states or nations

Vattel Pref

1. 6. 8.

Municipal law is the rule of civil conduct prescribed
by the supreme power of the State.

1. "Rule". It is "uniform & universal" is as far as it
extends. in other words general not personal within
its own limits. "Permanent" not transitory but
continuing either indefinitely or for a certain period

1 Bl 44. 5

"Of civil conduct" Natural law is a rule of
moral conduct. Municipal law a rule of civil
conduct. A statute law prescribes those duties which are
necessary in a state of order or unappointed as citizens
of a government. Municipal law prescribes those
duties which are required of us as members of a
nation

(2) Municipal Law.

"Prescribed" not retro-active (1 Bl Hs 6) Difference between retroactive & ex post facto laws the latter are always penal laws the former either penal or remedial.

3 Dallas 386
391.
Cull v. Calder
Sept 6th 11 S.

1 Bl Hb. 90. "By the supreme power" or the legislature.

19 Vin 513. Key Interpretation of laws. 1st Words to be gently understood according to their most known usual & popular signification.

Colles 143,
1 Bl 89. 60.
1 Boult 402.
2 Roll 253. Terms of art according to their acceptation among the learned in the art.

1 Bl 60. 2nd If words are dubious context to be consulted. Thus their meaning may be established by their connexion.

1101 365.
Palm 486.
3 P Mm 185.
2 Ray 1028.
Preamble often useful. So to compare the law with other laws relating to the same subject.

3rd Words always to be understood as having reference to the subject-matter.

1 Bl 60

4 Effects + consequences of diff^t construction to be regarded

1 Bl 61.

1 Mos 344

5 Reason + spirit of the law consulted separate ratione &c

1 Bl 61.

Plon? 232

4 Bac 647.

(4) Municipal Law.

From the reason & spirit of the law results the spirit
of a law by which is meant a construction of it agreeable
to the reason & spirit of it

1 Bl 62

3 Bl 431

Co Litt 246

1 Bl 63

1 Bl 63, 7

Municipal law is either written or not written.
The unwritten law includes 1st the common law or
general customs 2nd particular customs or local
usage & thirdly particular laws which are enforced
only in particular courts.

1 Bl 64, 7

The unwritten law is called unwritten because its
original establishment is not set down in writing
but it derives its authority from immemorial usage

Common law is a customary law common to
all the realm or state & not confined in its
operation to any particular district.

The common law depends for its support upon its reception from time immemorial. an usage to be immemorial must have existed from 1268 the accession of Rich^d II. but this distinction 22631 will be found of little use for many parts of the common law have been built up since the time of Rich^d II. however the late decisions on new subjects are considered as evidence of what the law was at the accession of Rich^d I. i.e. in theory - tho' in point of fact tho' theory is of small importance,

The evidence of the common law is to be found 1263.4.9. in records of Ct of justice. Books of reports, judicial decisions & treatises of the learned. & to be expounded by the judges of Ct of justice they are the depositaries of the C^l and are deemed ex officio to know it, Judges do not in theory make the law they merely declare what the law is.

These records &c are not the common law itself 12670 but merely evidence of the common law if a judicial decision was the law itself it never could be overruled. There is a difference between statute law therefore & judicial decisions the latter can be overruled the former not.

(6)

Common law.

These judicial decisions form what are called precedents. & precedents are only evidence not conclusive as to what the law is but
1 Bl 69.70 precedents are to be followed unless it is
1 East #95 flatly absurd or unjust.

It must be followed unless good reason can be shown not to. the onus probandi lies on the party objecting to the precedent.

A precedent is a former decision of the same point which afterwards comes in question.

How did the common law originate? the notion of immemorial usage is mere fiction. the common law was built up by courts of justice. How then does it fall within the definition "a rule prescribed by the supreme power" this rule is sanctioned by the supreme power for it is tacitly acquiesced in by the legislature.

Modern decisions in new cases are regarded as evidence of what the law immemorially has been. At the times of the law merchant the law of every device, these were not known until long after Rich. 1. —

III Particular customs are local usages which have the authority of law within their own limits. The C extends to the whole realm

1 Bl 74

2 Bl 263.

there are no particular customs in these states.

A part. custom when to be made a ground of claim or defence must be specifically alleged or pleaded & the existence of a custom must be proved as a matter of fact by a jury. he who claims or defends under a particular custom must prove the existence of the custom & that the case falls within that custom & the existence must be proved & tried by a jury unless the custom has been proved & recorded in the same Ct. in which case the record is conclusive evidence of the existence of the custom. A record ascertaining any matter of public right is evidence between diff^t parties where the same right comes in question, (Evidence) There are two English customs of which the Ct. takes judicial notice viz navelkind & borough English.

1 Bl 265

2 Bl 175

1 Bl 76.

2 Bl 265

1 Bl 76.

"

2 Bl 75

1 Bl 76.

Mr Wm Bl has placed the law merchant under the head of particular customs. but this law is more general as a code than any part of the common law. It governs particular concerns but there it governs throughout the realm. The law merchant then is a branch of the common law, as much as the law of descent.

1 Bl 75.

3 Bl 426.

2 Bl 459.

4 Bl 7.

2d Ray. 175

Chitty § 13.

Salk 125.

Local usages

The rules of the law merchant & if all the
 common law are neither to be tried by a jury
 125. to be specially pleaded or to be proved as
 matter of fact. by witnesses except in new
 200. cases when the evidence of experienced merchants
 ChB 21. 109 is used to testify as to what mercantile usage
 112. 298 is. but this is seldom done of late. & when
 it is the Ct. determine on the legality of
 the usage.

Requisites to the legality of a particular custom
 1 Bl 112. 14. Litt 3 212. 4 Co 58.

1 Bl 78. 9. Customs in derogation of the comm. law are always
 strictly construed. if they cannot be so construed
 as to include cases within the reason, if the custom
 is not within the letter of it. The rule is
 directly the reverse of the rule of construction
 of the common law.

- IIII. particular codes of law enforced only in certain tribunals. civil & canon laws are the principal of these codes. these laws are adopted in 1867-74-83 in the ecclesiastical the maritime the military & in the & in the & of the universities. the laws adopted in our prize courts are the same

these codes become part of our law by adoption 1874-80 they have no inherent force either here or in England. they are adopted as parts of the unwritten law by immemorial usage

Any particular code may be adopted either by immemorial usage or by act of the legislature. some states have by their legislature adopted the common law of England down to a certain period in such case the common law is part of the written law.

The common law & the ancient statutes of Eng: 1-11-12 have in genl been adopted by usage i.e. by the 411-1124. & of justice. Our & therefore are not at liberty to reject at present the & of Eng: except so far as it is unjust, absurd or not adapted to the state of society in this country. & the same is true of the ancient statutes.

Ancient Statutes

It was once a formal question whether there ^{or} exist in the state a rule of common law opposed to the rules Circuit Ct. of the English com. law. The objection was that we Conn. have no rules running back to Rich^d 1st but J. Wilson held that the rules adopted by practice in Court are authoritative. For it law is not suff^y comprehensive to apply to all those cases which arise under com. law as the duties of perfect oblig^s a system of ethics & a collection of principles applicable to all cases & therefore every state must have a com. law. & a sovereign state certainly has a power of making a com. law of its own.

"The second branch of municipal law is stat law, written law, because its origin is set down in writing,

1 Bl 106.8. The ancient Stat^s of England are prima facie the law
 1 Pack 22 310.14 of each of those states upon the principle that one acq^uires
 294.3. ^{carried with them} when they emigrated from the mother country as
 1 Pack 411.561 a birth-right so much of the law of the mother
 2 Plunys. country is now then extant. There is a difference
 1 Couv. Dec 32. between it law & common law in this respect that
 1 Kib 564. modern st of England do not bind but the modern
 decisions as to the common law as prima facie bind us.*
 The ancient st^s are those passed before our colonization
 no more gear is indeed used in any state. the gen^l
 impression is that the Stat^s of Hen^d & those before his
 reign are prima facie the law of those states

* For these modern decisions are evidence of what the com. law has immemorably been

Municipal Law, Written Law.

(11)

In some states the body of the English st law down to a certain period has been adopted by Statute.

In some these ancient stas have been adopted not by any legislative act but by the practices of the courts that is by usage. But in either case these statutes are regarded as written law.

Statutes are either public or private (genl special) 1 BL 55.6
a public stat is one whh regards the whole community, a private statute is one whh regards a part of the community or individuals. It is in nature of an exception to the genl law.

The application of this distinction is not perfectly obvious. most public stas do immediately & directly regard the whole community & here there can be no doubt that the stat is public. Thus the st of frauds, usage, limitation &c. again a st deciding that no person shall do thus & thus is clearly a public st. These are neither regarding unindividual nor merely part of the community.

But in some cases stas whh relate in terms immediately only to a class of persons are held to be public.

The distinction is this.

If the class of persons to whom a st immediately, in terms and directly regards, amounts to a genus, the st is public. If it refers only to a species it is a private statute. a genus within the meaning of the rule is a class whh may be divided into species. a species - whh may be divided into individuals.

2 Dams 154
1 Lev 86.
1 Bl 66.
4 Dams 279.
Tit Stat
Ed Law? No.
381.

(12) Public & Private Statutes.

Municipal
Law.

Ex gra. a st. relating to all mechanics is a public statute. but a st. relating to all tailors &c is private. This distinction is material non post. A st. directed to all officers qualified to serve legal process is public. but a st. respecting all ships is private. A st. respecting all a respecting all & all is private.

4 Hagg.

5 Hagg. 135

4 Hob. 227.

4 Bac 640

4 K. 424.

A st. incorporating an insurance company &c is without doubt a private st. but for the sake of convenience private st. are sometimes by the legislature declared public. but by the 6th Henry st. relating to the King is a public statute. Hence a st. giving a falsification to the King is hinc to the State is public tho' the st. according to the former distinction is private & if it gives a fine to the State.

12 Moo 234

613.

10 Co 57.

4 Bac 640.

7th Stat.

A st. which affects the public revenue is public tho' in its terms it sh^d contemplate only species or individuals. Bacon 135.

- Declaratory Remedial Statutes. (13)

And a Stat. may be in part public & in part private in wh. case the private part must be specially headed to. 4 Sac 640. Stat f.

All Sts are either declaratory of the common law & remedial of some defects in the common law.
A declaratory St is one wh. declares what the common law is & always has been. Now a St wh. is intentionally declaratory begins "it is hereby declared", but a St may be virtually declaratory without beginning in this manner.

A Remedial St. introduces a new rule wh. supplies the deficiencies or prunes the superfluities of Common Law of some preceding statute law)

The act of 1835 St. declaring concerning to the tenure of lands that they are allodial when limited to a man & his heirs is intentionally declaratory. A St. is not in any entirely declaratory unless they are expressed to be so. When a St. virtually declaratory is not so expressed to be it is when it does not begin with "it is hereby declared" it is so to be in affirmance of the common law.

(14) Penal Statutes.

Municipal Law, This division is not perfect for there is a small class of statutes neither declaratory or remedial viz Explanatory Statutes.

Prof 1412 In Explanatory it is made to explain
Carr 346 the terms or meaning of a former legislative
Salk 354 act. Thus 94 Hen. 8. is explanatory of 32 Hen. 8.
4 Bac 550.
Stat i 6.

Prof 415 All sts are either penal or remedial & so may
4 Bac 450:1 be beneficial. The term remedial here is used as
contradistinguished not from declaratory but
from penal.

Prof 415. A penal st. is one inflicting a penalty or
punishment. whatever be the kind of punishment
but a penal st quodlibet is now used to denote
a stat inflicting a fine or pecuniary mulct

Salk 271 It w^d seem from this that a st giving double
Prof 414. damages for a civil injury w^d be a penal st.
3 Mod 125 but it is not so for the double damages are
consequenter supposed to be given as compensation. & the
statute is considered beneficial.

The converse of a penal stat is remedial or
beneficial. ie a stat whh does not inflict
any punishment. or penalty is beneficial,

3407b
1 Wils 126.
7 F.R. 259.

Statutes giving any costs are always held to be
penal. Because costs are unknown to the BQ
and costs are a substitute for the ancient
amercement whh was strictly penal. by
B.L. if the Plf recovered judgment the Deft was
amerced. If the Deft prevailed the Plf was
amerced pro falso clamore. but this amercement
is now taken virtually away - not substituted

Sulk 205
Baith 119. 22
Comb 100
4. Moor

Costs were first allowed by St of Gloucester in
some cases. & were extended to nearly all cases
but not to all ^{by Statute that} Count Costs are always given to
the prevailing party.

Baz 511
Coul 3
Fauls

An action brought by an individual in his own right
to recover the penalty of a st is a civil action tho'
the st is penal. indeed the action is usually debt the
rules whh regulate civil actions are here to govern.
not the rules whh regulate criminal proceedings
If an indictment is brought in a penal stat
the proceedings are criminal,

Loup 382
391
1 Wils 125
4 F.R. 753
7 F.R. 257

(16).

All Stats are either affirmative or negative
this distinction is however merely verbal depending
1889 upon the phraseology. There are indeed some rules
H Sa-641 founded on this distinction but they are either
Stat 9. absurd or unmeaning.

Municipal Law (102)

When does a statute take effect?

By the English law every st. commences its effect on
from the first day of the parliament in which it
 is made. According to this rule many statutes
 must be retro-active unless the st. appoints some
 time for the st. to go into operation. and in this
 account a day is supplied for the commencing
 of any instant stat. in which case it of course goes
 into operation on the day fixed. The principle is
 that the whole session is considered as one day.

And on this same principle

It has been held that if two sts. are enacted during the same session & on the same subject & no time fixed for the commencement of either that neither has priority. but it has lately been held that in such a case the st. may inquire which of the two sts. was in fact made last, & that wh. was in fact made last will repeal the prior one made during the same term as far as they are repugnant.

This is the reasonable rule these sections are frequently, in similar cases, neglected, Bac. on Sts.

Our sts. have rejected the doctrine that a stat. can thus act retroactively & it has been here said that no stat. takes effect until the end of the session in which it is enacted.

There is no precise case in point but this appears to be the prevailing opinion among lawyers in this State.

Municipal Construction of Statutes.

Law.

The rules of construction are intended to enable us to discover the will or intention of the law giver.

36.7.6

1887

In the construction of Sts, especially remedial Statutes three things are chiefly to be regarded. The old law; the mischief; & the remedy provided by the new law, and the construction sh^d. be such as to suppress the mischief & advance the remedy. The judge consults the old law & the mischief that he may give a true construction to the remedy. (The rules given (page 243) for the interpretation of laws apply to the construction of Statutes. (vide ante).)

112-55-56-57

1268

36.7.18

8 May 1888

26.10.1

70.295

233.210

357

4.11.193

1.1.1888

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There is an established distinction between the construction of penal & beneficial Statutes. penal Stat^s are to be construed strictly & according to the letter. This rule is not soundly expressed the true rule is that penal Stat^s are to be construed ^{strictly} as ag^t the par^l acc^o & int^o in its favor. Ex gr^a No person can be adjudged to be within the penum of a penal St. unless he is within the letter of it. & on the other hand no person shall be adjudged to be within the penum of a penal St. unless he is clearly within the reason of it. tho' he may clearly within the letter of it. so that a party to be punishable under a St must be both within the letter & reason of it. The only reason is the benevolence of the law.

3.10.7.8.

In remedial stats the cardinal rule is that municipal
the spirit of the law must govern on both sides law.

In giving any animating of specification in penal it
does not increase them unless they are names who
by reason of any incapacity (are exempted from
the punishment of the statute by common law)
thus idiots lunatics &c. are exempted from
such - that species of punishment which the statute
prescribes. 1 Hawk 163 1 Hale 357 4 Burr 651

Ed. Rogers says that the rule of construction ought to hold
to be the same in all rules of statutes and the scope
is true but the distinction is well settled. But a
singular rule of construction was adopted in
the construction of will - 2d persons was
held to include only those who might convey
land at C. L. -

Where the repetition of an offence incurs an augmented
punishment the person who commits such offence cannot be punished with the augmented
punishment unless he has before been convicted of the same offence & judgment rendered against him.
This rule results from the established rule of evidence. Rest 52
for unless there has been a judgment against him the 3d rule 163.
no evidence that he has committed a prior offence
of the same kind. but the rule goes further
where one is prosecuted for a second offence he
must have had judgment against him before the second
prosecution is commenced. or he shall not suffer
the augmented punishment - & further he must
have been convicted of the first before he
committed the second or he shall not suffer the
augmented punishment - he is consider the
augmented punishment as inflicted for the
hardship of the crime in disposing the
first punishment.

(20) Construction of Statutes.

Then an injury case in which a penalty is repeatedly incurred by the continuance of an offence. Thus a penalty of £10 for every month living with the offence continued. & one has had to hold that in such case there can only one penalty be recovered at a time. But this rule is contrary to the English law.

Dim. 16. The rule of strict construction as ag^t the subject
606 77 has not been uniformly observed in Engl. Thus
+ 606 51 by 21. 33 & 34. 3. a servant killing his master is guilty
of petit treason & it has been held under this that
if a servant killed his mistress that he was
guilty under this of petit treason. But these cases
are not attempts to be new laws.

McCaug. 79. 10 The penal laws of each foreign state are in
Vattel Bk. 2. 59 the strictest & most absolute sense local so
1232. that no one can take notice of the penal laws
502 733. of another state
1. 426 123.

So if one commits murder in New York he cannot
be punished for this crime in Court for the murder
is an injury ag^t the people of New York & the people of
this state are not injured & therefore cannot prosecute him

But the penal law of each foreign state
intend to show to them that state and
in fact to enforce the laws of that state. (Sh)
In this state, if an individual of another state
steals a horse in New York & brings him into this
state he may be punished here also in Mass. not
in New York 2 John 2477.4. There is no reported
case in Conn? but there have been abundance
of cases in the sup: Ct. I think the rule
in Conn? & Mass is clearly wrong. It is said that
the bringing of the goods into this state is
a repetition of the offence of stealing, & is
a violation of our law ag? stealing.

Impressed that our constitution is that the
letter may be either enlarged or enforced for the purpose
of effecting the intention of the Legislature. 36-7
Has the Ct of Mass said that all laws to mag.
dense so as to hold that under the Ct is a form
case - is not dense. & Cts have greatly departed from this
in many instances from the letter as the St
of Cal. de bonis asportatis was held to extend to
to Administrators the only executors were mentioned
so Fleet prison.

Under the rule not only substances & claims but
also words & technicalities are said to mean
something diff from what they are really. The
word 'void' is frequently construed to mean 'voidable'.
Whenever a transaction is declared void on any
st if the evil intended to be remedied w? be let in
by considering the transaction as merely voidable
the transaction must be void but if the
evil w? not be let in or w? be remedied by
considering the case void is meaning voidable
It will be construed voidable.

Construction of Statutes.

Municipal Law When a St enables a Ct to do an act of justice to a party the Ct is in general bound to do the act in all cases falling within the Stat. If it is apparent from the face of the St that it is to be left to the discretion of the Ct, then the rule does not apply. Thus 4 & 5 Statutory respecting costs by which defendants in informations are in certain cases entitled to costs. Here the Ct is bound if the matter instead of being an act of justice was merely a matter of convenience the Ct would not be bound to do the act.

But the rule has not been extended to executive offices. Prisoners for their acts, not being acts in the administration of justice, do not come within the rule above,

10. Hed 222 It is a general rule that a St taking away a right and 4 Bar 650 to be construed strictly because it abridges the right of the subject. But this rule does not extend to the St of abridgement. The reason of which exception 11. Hed 124. appears to be that this St is not made for the purpose of abridgement of the subject's rights but for the purpose of quelling long possessions & for the purpose of discouraging stale claims.

Explanatory Statutes are to be construed strictly. These are not strictly penal nor remedial — For otherwise there would be no end of explanation, the st being intended to explain it is presumed that the legislature used precisely the words w^h best convey their meaning. When a st is partly penal & partly remedial the diff^{ts} parts are to be construed diff^{ly}. The 13 & 27 Eliz 3 Co 52. have been liberally construed as to the civil part but strictly as to the penal part. The Stat of Usury is construed lib^{ly} so far as it acts on the contract & strictly so far as it acts on the offender. Dum. 346
Black 534
4 Bur-650
Thom 87
Enc. abn. 2. 6.

It is a rule of construction that diff^{ts} parts of a st are to be so construed if possible that the whole may stand & take effect. but if two parts are ~~otherwise~~ inconsistent the latter repeals the first, but if a saving in a st is altogether inconsistent with the st so as to render the st entirely nugatory the saving is void & the st stands. As a st vesting in the King the estate of & saving the right of A.

The rules for construing Stat^s in the same law as in Equity for the object of both is to discover the meaning & intention of the legislature. Thom 22
32 & 38

Repeal of Statutes.Municipal
Law

The Govt & Stat Law are in their own nature
repealable by the legislature. when the Govt
and a Stat are repugnant the Govt Law
is necessarily abrogated for the last will
of the law-giver is Law.

1801 111 same on the same principle of the Stat are
115 repugnant the former repealed

1802 27

4 Dec 1801

1804

1806 27

1806 On the same principle of the former & latter
1807 parts of a Stat are repugnant the latter
must stand & the former be repealed.

1808 1809 A claim in a Stat declaring that it shall
never be repealed is void. & it is void in
a Stat providing that it shall not be repealed
except by a majority of two thirds of a vote.
The constitution of the U.S. free from this objection. it is
a compact between sovereign states

The constitution requires that 2/3 of the Legislature should
concur before an amendment can be proposed to
the people but a majority of the people may
alter it. Is it liable to this objection?

The law never favors a repeal by implication.
 If two statutes appear inconsistent the to will 11 Geo 3
 endeavor so to reconcile them as not to 10 Geo 11
repeal the former & unless there is a clear 4 Geo 6 & 7
inconsistency the former will stand.

It is so that an affirmative st does not abolish all the
common law, but if there is a st in affirmative terms in
consistent with the common law, the common law
rule must be repealed. Thus at common law 6 Common Law
days notice is required now an affirmative stat dec st
that 12 days notice is necessary plainly repeals
the old. — It does not the word affirmative
mean in affirmance of the old ? if so the
rule is clearly correct.

If a st gives a remedy in any case in all this 2 Bur 1035
was already a remedy by the old law the st does not common law
expressly take away the common law remedy nor abolish
is in consistent with it the old law the st remedy
are both good. The stat remedy is here called
cumulative. The party suing may elect to
proceed at old law or on the statute,

Repeal of Statutes.

Municipal Law If a penal st inflicts a higher or a lower punishment for a given offence than is inflicted by an older stat the former stat is repealed
 252. for it is deemed absurd that a legislature could
 4 Bun 2026 intend to prescribe two diff punishments for
 4 Bac 684 the same offence by statutes of their own
 St: K

10 Mo 337 And if a penal stat inflicts a lower punishment
 4 Bun 2026 than is prescribed by cl then the stat is repealed
 2 Show 30 the cl. But if a penal stat inflicts a higher
 4 Bl 654. penalty than that at com law for a given
 Bac St K. offence the st does not repeal the cl but
 4 Bl 135. the offender may be prosecuted at cl & then
 the com: law punishment is inflicted for
 Thus the st offendz agt prjry. This last
 distinction is arbitrary and are founded on
 the principle of benignity.

2 Bl 111 It is said that an affirmative st can never repeal
 antg 25. a pen affirmative st but this rule is also unreasonable
 2 Show 30. or absurd —

These rules have been given for the construction of
 a st which contains an express clause of repeal they
 contemplate merely a st which contains an implied
express repeal.

If a repealing st is repealed the st repealed by the ^{4th Dec 63}
 first repealing st is revived

1 B. 70
 See St. 4.

If a Stat is repealed by several subseq. stats
 the first stat is not revived until all these
 subseq. statutes are repealed -

If a st which has been repealed is revived by a ^{4th Dec 63}
 subseq. st. the intermediate repealing act is
 itself repealed to the extent of the inconsistency

All acts done under a st while in force but which ^{4th Dec 63}
 is afterward repealed are valid. but it is said that ^{Jan 233}
 a st which is afterward declared null & void by a
 subseq. act of the legislature, is no justification
 but a subseq. legislature cannot declare the acts of
 another legislature void they may repeal a prior
 act but it is the province of the judiciary to
 declare a st void. If this were the case no
 man w^d be safe in obeying the Stat laws of
 his country - Such a construction might
 make the subseq. stat ex post facto -

(28)

Retroactive laws.

Municipal Law. Laws sh^d not be retroactive hence it is that
if a penal st^y after being violated is repealed
1 Bl 2451 before the judt ag^t the offender & another penal
1 Hawk 169. it is made for the same offence he can not
2 Bac 636. be punished under either st^y unless the latter st^y
1 Root 59. continues the former st^y as to all offences committed
U. S. vs before the repeal of the latter statute the consequence
Hendwell is that regulations when they repeal a penal st^y
circ^l st^y continue that prior st^y as to all offences committed
under it,

See in case of Qui tam proⁿ after action
commenced, Can the repeal of the stat^e
destroy the vested right of the pl. vide
post (58).

The rule is the same in case of the expiration of
a penal st^y before ^{judt ag^t the offender} the punishment of the offender
as when it expires in the same limitation if an
offence is committed before its expiration but
if judt is not pronounced until after its expiration
the offender cannot be punished.

But there are cases in which a statute consequen-
tially have a retroactive effect. Thus a statute
to do an act which before the day of performance
that act is declared unlawful this is not a
retroactive law tho in such an instance it has
the effect of a retro-active law on the contract
and nulls the contract.

Salk 138

1 Pl. C. 44 H. 10

1700 211

22 Nov 218

in law 317

321 1502

On the other hand if the contract not to do an act
which a subject it makes it his duty to do
the contract is annulled & yet tho it is not
retroactive for the annulling or suspension of the contract
is not the object of the law and indeed there
is a tacit condition annexed to the contract
that it shall not be performed if it becomes illegal
to perform it.

If a statute declares a contract to be illegal
it afterwards repealed & such contract is made
while the statute is in force the repealing of the statute
does not make the contract good & indeed
this is an universal rule a contract ab initio
void can never be made good by any thing
except fiction. Ex. under the stamp act of the Litch.
MS a note was given which was not stamped
& after the repeal the stamp act an actⁿ was
brought & it was held that it did not lie,

1 H. B. 105

Litch.
County,

30

ex post facto laws.

Municipal
Law

D. 3/12/58 (1)

2 Feb 31.

12-644

H. O.

27.254.

17. n 6208.

J. 14

22. 2. 4. 1

Ch. 131

} 333

If complete performance of a contract is made illegal by a law it may be enforced at law as it is consistent with the it. there is some cases where it is not so. In some cases it may be had at law & the principle is the same at law as in equity but the remedy at law is not frequently adapted to the case.

in continuation of the 1st. Since the several states
or rather people, have entered in a union to create a
new active federal law. It also binds the several
states to pay an law impairing the obligⁿ of a
contract. It has been settled that the insolvent
laws of the states, which discharge the debtor's future
property are unconstitutional so far as
they discharge the person of the debtor they are
constitutional. For this does not discharge
or even affect the debt it merely affects the
extent of the remedy.

1295

It has been said that a St continues in
 reason & divine law is void but this is an
 indefinite opinion for there is no known ^{1600M} that
 an authoritative pronouncement that any St of
 the Legislature ^{void} is contrary to reason & divine
 law now when violent & unreason ^{1700M}
 unreasonableness in a law occurs a C of C ^{1800M}
 seems release apt it on the ground that it
 was not the intention of the Legislature
 to carry the law into effect under these circum-
 stances but this mis supposes that the intention
 of the Legislature is clear & clearly contrary to reason
 or the divine law. the two cases therefore stand on diff^t grounds

Even legislative act contrary to the constitution
 constitution of a state ^{1800M} void for constitutional
 law or paramount to it last & it is settled
 that it is the province of the C^t to determine
 the constitutionality of a statute

If a St makes a new rule concerning and ^{1800M}
 old offence & appoints a new punishment ^{1800M}
 decision to execute the law the jurisdiction ^{1800M}
 of C^t in England is not ousted off its jurisdiction ^{1800M}
 for the ancient jurisdiction of C^t ^{1800M}
 jurisdiction is not to be ousted by implied

- But if a St creates a new offence & appoints a new officer for the trial of it the jurisdiction of its of said jurisdiction is excluded
1. Hank 4
2. Hank 5.
bro 643
Comp 244
2. Hank 244
1. Hank 244
- shall be a felony or a misdemeanor & except that Com Pleas shall have cognizance the jurisdiction of PC is retained. For that it had no prior jurisdiction, Nothg is here taken away by implication - for nothg at all is taken away in any manner,

could

If a St confers a special authority on certain persons be affecting the property of individuals the power must be strictly pursued & it must appear on the face of their proceedings that these authority was strictly pursued & their proceedings are void & they become trespassers for these Sts are in derogation of the right of third persons. are in therefore to be strictly construed & pursued.

Municipal Law (1803)

Authorities conferred by Statute

If a Statute creates a certain body of men to do certain things by vote of a majority and appoints a certain number to be a quorum, the vote of a majority of the quorum is not sufficient unless it is a majority of the whole. (This we suppose the body, not to be a corporation). For such bodies are the creatures of Statute & have no such power except such as are expressly given or necessarily incident to the power necessarily incident to their existence & the performance of the powers expressly given. Now the power of binding the whole by a majority of the quorum is not expressly given nor in the sense above stated is it necessarily incident.

If a private authority is given by Statute to two the authority is joint (unless it is expressly said that it shall be joint & several) & we cannot create the authority alone neither does it survive to the survivor if one dies. But if a public authority is conferred by Statute upon two a man it is joint & several and on the death of one the authority survives.

By private authority is meant a power affecting merely individuals,

(311) 21

184 P229

2 Jan 1817

1820.

30 L 592

Co Leth 181.1

If the authority given by it to several is
of a public nature the act of a majority
all being present is the act of all.

If the authority was of a private
nature all must probably concur,

ack 212. In the case of corporations the rule is that if
1. 20. 1816, all the corporators are summoned the vote of
the majority ^{those} present will bind the whole
Actual summons does not appear to be
necessary where the meeting is regularly ^{held} continued

the majority of the corporation is not necessary
to pass a resolution.

Pleading Statutes.

The rules on this subject in the books are exceedingly confused chiefly from looseness of language. one cause of it has been the confounding of the terms "pleading," "counting upon" & "reciting."

Merely to plead a st is to state those facts which bring a case within it. it is not to name a st or to recite it. Ex to plead the st of limitation the Deft merely says non apumpeit infra set annos. Again to plead the st of frauds & perjury the Deft merely says no note a memorandum in writing. Again to plead the st of Usury the Deft merely says that the if agrees to take & the Deft to give 7 p. c interest &c.

Counting upon a st consists in expressing the st or referring to it in words thus "as the form of the st in such case made & provided" or by other words adapted to the case - as by virtue of the Statute in such case made & provided.

Reciting a st is quoting its contents.

(36)

Pleading statutes.

Municipal Law.

46.70.

of public statutes the judge is bound to take judicial notice. therefore it is not necessary to recite a public stat. the rule is simply expressed that he must not plead a public st. but any one intending to take advantage of a public st. must plead it tho' he need not recite it. The facts which bring the case within the statute must be alleged.

6.0236.

In the other hand the judge cannot take judicial notice of private statutes. a party then meaning to take advantage of a private st. ~~he~~ must recite it either verbatim or substantially.
2.02106 & if its existence is denied it must be proved.
Its existence is denied by the plea non est recd. —

10.0270

In this state a man may defend himself by private st. with specimen pleading & reciting it verid at com. law. but here as well as in England if an action is bro't on a st. the Def must both plead & recite it. — The power in Court of giving a private statute in evidence under the genl spec arises from our statute of pleading but the private statute must be read in evidence like a deed.

10.0279

2.02141

10.0270

10.0270

10.0270

of public st when required to be pleaded
need not be recited nor in gen^l be averred. *12 B*
upon the it must be pleaded - & this whether Cro 236.
it is the ground of claim or of defence. *Went 25*
The reason is that the judges are bound *2100. 4 Co. 76.*
ex officio to take notice of public stat^s *10 Co 57.*
Bac. Ab. St 2.1. *2 East 341.*

- But a misrecital of a public st may be
fatal even after verdict *Howp 494.*

1 It is s^d that if a public st is misrecited in *bro 6136*
in an immaterial part it is cured by verdict *376. 522.*

- But this does not appear to be the rule. *659 Cro E. 236. 45.*
The misrecital of a public st. does not. *See H 15.*
appear to be fatal unless the Pleadings *Ed Ray 352*
bring up to the st as recited as in. *20 M 516.*
the words ^{contra} secundum formam statuti pleaded. *Long 90. 2.*
How? 79.

- But if he misrecites a public stat & concludes *804.*
by swearing upon it gen^l as contra formam
statuti. the judges will take judicial notice
of the true stat & the misrecital however
material will not be fatal. *bro E 232.*

- And in case the party does thus tee himself *bro E 236*
up to a stat it is ill after verdict. *245*
bro C 232

In this state & it when to be used by way of defence may universally be given in evidence under the general issue and this by virtue of our Statute of Pleadings - but notice must in general be given to the adverse party, Municipal Law.

In declaring on private Sts it is necessary not only to plead the St but also to recite it & the recital may be either literally, or substantially the latter is the more proper mode, for the same takes judicial notice of private Sts. 4 Co 76 2 Roll 453 Collet 57.

If a Statute is in part public & in part private the former part must be pleaded but the private part must be recited 10 Co 57 2 Roll 227.

- But it is never necessary in any case to recite the title of a St or the preamble for the title & preamble is no part of the law. neither is the preamble St 13. & 15. any part of the law itself it merely explains the reasons why the St is made. but the recital is necessary yet the misrecital of the title or preamble of a public Statute may be fatal, but there is no contrariety of opinions. (some dissenting Collet 62 as in case of public Sts generally vide ante). i.e. the misrecital is fatal when the party ties himself up to the Stat as recited, (ante)

(40)

Pleading Statutes.

Municipal - Where by reason of pleading the recital of a stat
law is necessary the recital of the stat must contain
2 Henk 446 the date of the stat & the place where it was
bro 211 enacted & these are essential for a private stat
bro 232 is deemed as much a private document as a deed
Conf 474 or a bill of exchange. And a mistake of this
commonly kind is fatal on quill demurrer - The decum
act 265 is not sufficiently described. It is not identified

4 Co 76 - To the dec^y on a private stat the Def^t may plead
2 Mod 57 and till record so the Plf when the Def^t pleads a
private stat for the existence of a private stat is matter
6 Co 23 of fact, quod public statute & the party pleads
bro 235 it must prove its existence
4 Bro 515.

5 Co 28. - If then the Plf declares on a public stat & recites
bro 235. it incorrectly the Def^t sh^d demur not plead recal
but record for whether a statute pleaded
exists or not is not matter of fact but
matter of law.

Counting upon statutes

(41)

It is a general rule that a public st need not municipal law.
be counted upon. as to form It of Wary & South 312

61 E 601

1 B & S 113

(Re, etc. Qui tam) Holt 63

exceptions to this rule are first if there are circumstances H. B. 11
remedies by 67 & 68 st the party suing under the Wary 312
st sh^d count upon it for otherwise the W. will Holt 63
be said that the party pursues the old remedy Holt 634

(in a book incorrectly copied) Comyn says the Wary 487
It must be rehearsed but there can be 2 C. 12 200
no pretence that it is necessary to Wary 41
it, — vide brief Barnard & Worth C.C. Dec. 1818. 2 C. 12 341

II In actions on personal st. of any kind the Def. 2 Wary 312
must conclude by counting on the st. this rule 11 B. 1 356:7
holds whether the prosecution is civil or criminal Wary 312
thus if one sues to recover the penalty of the st of 2 C. 12 312
Wary he must conclude contra formam re. 34 1210

For this ex^t there is no satisfactory reason but it is a
well settled rule 13 ac Abi. ac qui tam R.

61 ac 1210

1 Wary 103

710 521

III If a public st gives a new species of action Wary 312
in a sort of action unknown to the St. he who H. B. 1 356
sues under the st must sue upon the st Holt 634
(in a book incorrectly copied in some of the books) 2 C. 12 339
for this rule also there is no very good reason. 341 334

Ex. sh^d action to recover the place wages
under the st of Gloucester, — The Stat of W. 12
does not give a new action within the meaning
of this rule this stat merely enables certain
officers to frame an action in certain cases.

Leading Statutes.Municipal

Law.

4 Dec 655

Comyn 20

act on 5th.

2 Dec 414

4115-1149

Where a public st merely extends an old action to a new case it is not necessary to count upon the st. Thus the st. of 1777, enabling an ex^o to maintain trespass against him who has injured the property of testata during the testator's life time. —

- In actions then on pub sts not penal counting upon the st is unnecessary except where it gives a new action or unless there is a concurrent remedy at common law.

- If then a st creates a right or duty & gives no remedy for its violation there is no need of counting on the st

Dart 332

Dart 212

Again when a st not penal creates a right without expressly giving any remedy the st need not be counted upon. Because in both these cases the C^l supplies the remedy & there is no other remedy

4 Dec 616

Dart 66

Dart 64

If one st merely prohibits an act as illegal and another st prescribes the penalty, both must be counted upon by him who prosecutes for the penalty, tho both are public for the right of victory is given by neither of the statutes alone

Commonwealth v. D. If an indictment concludes with contra
 57 R 166 factum stat^l when the offence exists only
 2 Hanks at c.l the words contra &c may be rejected
 25. & 115.6. as surplusage. but in fact this question has
 57 R 362.3 always occurred after verdict. in demand
 Comyn 26 thinking that the indictment w^d be ill.
 Bangs 519 & a quill demand w^d reach it not being
 actual & within the sts of pro factis. who require a special
 demand in case of objections to mere matter of form
 in all cases except indictments.

1 Burr 153 Where there is an exception in the enacting clause
 57 R 53. of a stat this exception must be negatived in
 17 R 141. a complaint &c on a st. but an exception in
 Common B^y a distinct clause or in another st. need not be
 Not a stat^l negatived. In the former case the exception
 1 Burr 148 necessarily enters into the description of the
 67 R 559. offence or the right of action. but in the
 77 R 27. latter case the exception is matter of defence
 87 R 542. for the Def^t. like the defenceance on a bond.
 1 East 646. When necessary if the exception is negatived,
 2 McAl 554. stra 497. the omission is fatal

Ex gra By Eng game laws it is provided that if any
 person not possessing such a pubold interest shall kill
 such game he shall forfeit &c. in an indictment
 on this st it must be alleged that the Def^t
not possessing such an estate killed &c. but scus
 if the st had been thus No person shall kill such
 game & in a distinct clause a proviso that
 persons having such a pubold interest shall not
 be within the st.

When there are two substanting witnesses on
 one side only & the other by G. & the
 party complaining may found his complaint
 on either.

Municipal

Law.

2 Hank 1026

2 Hank 779. 803.

505.

Book 64

Book 75

And in such a case if the Jlf take the
 it remedy but finds that he cannot make
 out his case under the it he may still in
 the same suit claim at C. & recover at
 C. if he can make out his case at C.
 Ex. On it relating to certain trespasses in the
 night season. a person commences a suit
exple in the it. but he cannot make out
 that the trespass was committed in the night.
 yet under this ^{declaration} rule the Jlf may recover as at
 C. & the C. will reject the action from an ab.
 as surpirage. (the same rule in case of public
prosecutions.) Formerly held that the rule
 did not hold as to criml. prosecutions

2 Hank 490

2 Hank 211

302. 306.

Book 292

2 Hank 495. 5.

502. 169.

2 Hank 131.

17 Hank 211

2 Hank 171.

509. 9.

605. 231.

307. 197.

A strong case of this kind occurred
 in Leichfield County on the stat. of Blasphemy.

But when the particular mode of prosecuting is Municipal
 prescribed in a distinct substantive clause the st Law
 mode of proceeding may be pursued a any proper Hill 200
 mode of prosecution may be adopted for 2 Hank 302.
 an independent clause creates an offence which
 when made was punishable by any proper
 common law mode - the subseq^t clause
 cannot oust by implication the remedy
 which the st had before provided,

If a st creates an offence & prescribes no mode 6 elod 16.
 of proceeding & no sanction the st will bind it 1 Burr 44
 and to punish the offender and it will in such 34 L 290.
 case punish it as a misdemeanour. Thus it shall Long 425.
not be lawful for any man to do so &c. If 260 75.
 any one violates such a law the st 4 Dec 608.
 calls it a misdemeanour & punishes it as st. il.
 such, 1 Burr 544.

The rule is the same when the st creates a
right but prescribes no remedy. The common law ph
 will lend its aid to enforce the right in any action
 adapted to the case,

(48)

Eng H25.
or 245.

To obstruct the execution of power granted
by it is an offence at C & T may be prosecuted
by any proper com: Law remedy as to indictment
in all cases the indictment sh^d not be made
contra formam state for it is not a stat
offence but a c & officer

Municipal Law (1894)The town prosecutor

as public offence which cannot be prosecuted by any individual in his own name, for the offence & damage is to the public & the remedy for even more than 100% belongs to the public injured. In England there is no such thing as the prosecution to be in the name of the King, but individuals do prosecute in the name of the King, and in 1840 1900 1905 1908 1910 1912 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2818 2819 2820 2821 2822 2823 2824 2825 2826 2827 2828 2829 2830 2831 2832 2833 2834 2835 2836 2837 2838 2839 2840 2841 2842 2843 2844 2845 2846 2847 2848 2849 2850 2851 2852 2853 2854 2855 2856 2857 2858 2859 2860 2861 2862 2863 2864 2865 2866 2867 2868 2869 2870 2871 2872 2873 2874 2875 2876 2877 2878 2879 2880 2881 2882 2883 2884 2885 2886 2887 2888 2889 2890 2891 2892 2893 2894 2895 2896 2897 2898 2899 2900 2901 2902 2903 2904 2905 2906 2907 2908 2909 2910 2911 2912 2913 2914 2915 2916 2917 2918 2919 2920 2921 2922 2923 2924 2925 2926 2927 2928 2929 2930 2931 2932 2933 2934 2935 2936 2937 2938 2939 2940 2941 2942 2943 2944 2945 2946 2947 2948 2949 2950 2951 2952 2953 2954 2955 2956 2957 2958 2959 2960 2961 2962 2963 2964 2965 2966 2967 2968 2969 2970 2971 2972 2973 2974 2975 2976 2977 2978 2979 2980 2981 2982 2983 2984 2985 2986 2987 2988 2989 2990 2991 2992 2993 2994 2995 2996 2997 2998 2999 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039 3040 3041 3042 3043 3044 3045 3046 3047 3048 3049 3050 3051 3052 3053 3054 3055 3056 3057 3058 3059 3060 3061 3062 3063 3064 3065 3066 3067 3068 3069 3070 3071 3072 3073 3074 3075 3076 3077 3078 3079 3080 3081 3082 3083 3084 3085 3086 3087 3088 3089 3090 30

Qui tam pros^{us}

et qui tam is then a prosecution brought
 2 Ham 204 partly for the prosecutor & partly for the King
 + 21 305. The individual presenting is the sole
 3 Ll 102. party tho' the pros^{us} is partly in behalf of the
 1 Br 37. King. the very form shows this. Qui tam pro
Com. Reg. & ordinis Reg. & quam pro se ipso in hac parte sequitur
 Act 14 c. 1.

It is^m qui tam an either by action or by informa^t
 + 21 305. The diff^r is that the former is caused or by civil
 3 Co 101. 2. procep by mit de c^a &c, the latter is caused
 or by a criminal procep. viz a capias under wh^{ch}
 the deft is to be imprisoned or put to bail

Comp 112 et qui tam prosecution commenced by information
 4 Co 256. 2. procep is properly an information — Qui tam
 1 Mag 125. information — The other may be called a
 2 Co 448. qui tam action. This is a civil suit (note 16)
 4 Co 257.

prosecutions ~~in the criminal or civil in general~~
 Qui tam ~~actions~~ are brought in penal acts
 to recover a penalty or forfeiture of some kind
 a Qui tam prosecution is never used at
 C. L. is to recover a penalty or forfeiture
 given by the C. L. - It is used merely to
 obtain a penalty given by Statute. where
 the Stat enables an individual to sue
 & to retain part of the penalty.

A popular action is one given by Stat to any one
 who will sue for the penalty incurred by the
 violation of a penal act. In some cases
 the whole penalty is given to the informer & in
 others part to him & part to the King be that
 in both cases the action is called popular.

4 B. & C.
 1 B. & C. 7. 3
 1 B. & C. 113
 2 Hank 177
 6 C. 177.
 Bro. 360:1.
 532:2.
 3 B. 160
 2 B. 437.
 Comyns Dig.
 1st ed. 11. 1.
 2 B. 11. 2.
 2 Hawk. 365.

Popular actions & qui tam are sometimes confounded
 but they are by no means the same. A popular
 action is not always qui tam as where the
 penalty is wholly given to the prosecutor here
 the action is not qui tam. and a qui tam
 may not be popular as where part of the
 penalty is given to the individual injured by
 the Statute & the rest to the King here the
pro the qui tam is not popular and can
 be brought only by the individual injured.

Comyns Dig.
 4th ed. 11. 1.
 3 B. 161.
 2 Hawk 377
 1 B. & C. 37.

In what cases will qui tam proceedings lie?

If a st. inflicts a fine or a part of a penalty 2 Chit. Pl. 187.
to any person who will prosecute, the for an official Sec 57
immediately injurious to the public only, then 2 Chit. 377 or
an individual may have an action ^{in law} or the 377.
penalty. The statute expressly gives any person the
right of bringing an action in it does
plainly give it anybody.

1st
2nd
3rd
4th
5th
6th
7th
8th
9th

If a st. inflicts a fine or a penalty & then
gives a sum certain to the individual who
will prosecute for it any person may bring an
action in which the penalty & the sum cert
certain is recovered to that person who
prosecutes & he retains the sum certain & pays
over to the state the penalty. So. Here the action
is qui tam.

The principle is whenever a st. inflicts a penalty of any kind and
gives to any individual who will prosecute for it any part
in prosecuting it gives him the whole or part of a penalty or the
reward any one may bring the action.

When the whole recovery is to the individual
prosecuting I think that a qui tam is not 3 Chit. 112
the proper action. Here is no recovery here
to the King & why sh^d the action be brought
in behalf of the King.

Sui tam prosequi.

Municipal Law. When a st. forbids an act immediately injurious to the public only ^{the King} no person can prosecute

2 Hank 377 or it unless some penalty, a some part of it.
1 Bac 374 or some other recovery is assigned by the st.
2 Hawk 263. to him who shall prosecute. The prosecution must be commenced by the King's officer, because the person bringing the action has no interest. No power to sue is here given expressly or impliedly by the statute. — No one in such case can prosecute in his own name — in Engl? an individual may perhaps prosecute in the name of the King. (ante 49) ^{may}

2 Hank 377 But if a st. forbids an offence immediately
1 Bac 37. injurious as well to an individual as to the public
4 Co 13. A. and gives the ind^l injured a penalty or part of
12 Co 13. a penalty or damages to be recovered by a jury
3 Bl 161. that individual may bring a sui tam action on
6 Co 134. the Stat. for both the penalty & the damages

2 Chitty 2nd 16 But if the whole penalty is to be to the party
17. note & injured I think that the action sh^d. not be
a sui tam. he may have an action indeed on the Stat. but in his own name. — not at all on behalf of the King.

When a person is liable to a penalty, the person who is liable to the penalty is liable to the officer for the penalty being in action in his own name. It is not true that a person is liable to the officer for the penalty being in action in his own name.

When a person is liable to a penalty, the person who is liable to the penalty is liable to the officer for the penalty being in action in his own name. It is not true that a person is liable to the officer for the penalty being in action in his own name.

It has been held in the State that in a case where a person is liable to a penalty, the person who is liable to the penalty is liable to the officer for the penalty being in action in his own name. It is not true that a person is liable to the officer for the penalty being in action in his own name.

When a penalty is given by a statute to the king & partly to him who shall prosecute the same by his proper officer, the king & the officer shall recover the whole penalty.

3. El. 102
2 Hen. 3. 394
11 Co. 65. 66a
77. 2. 536

We have a statute expressly enacting that the state may prosecute in such case.

& the will debt lie where the penalty is not due in money. It is not

(56)

Qui tam pro.

Municipal

Law

or bona fide conviction on a qui tam prosecution
either by action or information is a bar to very

304 H.C. 2. this prosecution for the same offence. - this rule

11 Co 65. 66a holds a converse. is a public prosecution bar as

1 Jac 41. qui tam

ostendit &

3 EL 62

Comyn Dig

ostendit &

244 H.C. 270p To rule a bona fide acquittal on a qui tam

prosecution by action or information is a bar

2 Hank 391 to very other prosecutions for the same offence &

& converso.

But state the conviction a acquittal must be bona fide. - The fact that it was not bona fide is a good replication to the plea of a prior convⁿ or acquittal,

2 Hank 391. The pendency of a qui tam action may be pleaded

3 Burr 1423. in a statement to any subsequent ^{single} prosecution for the

1 Bar 41. same offence. The rule is laid down that the

bro & 261. pendency may be pleaded in law & equity but this

404 209. is absurd for nothing less than a judgment can

be a bar. If once barred it is barred forever

There rule here must be the same as

in civil cases where a prior ^{personal} action is always

pleadable in statement only

(53)

Qui tam pro
Municipal Law. In such case can the act, give enter a
not pro except as to the faith given to the
State

2. Hank 302 In can the King in any way discharge a surety
the suit so as to bar the right of the prosecutor
2. Hank 302 But I say that indemnity can be tried if it
can be because it is a contract. But also red enter
in this contract. I say so, it may by repealing the Law
In Suppose the Statute is repealed
pending a qui tam can the Plf recover
(ante 25.)

2. Hank 302 And when the penalty is given to the party
2. Hank 302 injured by the offence the King cannot enter before
2. Hank 302 action brought unless the part referred to the
2. Hank 302 party injured because as to him the it is
2. Hank 302 remedied the the law remedied. - but the action
before action but immediately on the consumption of
the offence & this time where the penalty
is as to its amount vindictive, - The case
is like a debt due by contract - the King
cannot interfere.

The prosecution is a popular action brought at
any time within the year of the felony after conviction
 but not before of release before conviction we have 24th 1392
 not having any effect in barring a subsequent action 24th 1393
 for the King had no right at the time of the
 release at least no consummated right,
 for it & then must be no consummated action in
 a popular action shall be a subsequent action 24th 1394
 2^d that no release supersedes the action shall have 32th 1392
any effect. 19th 1393 1st is an affirmation of the 36th 77
 6th for the King in laying down it was supposed 1st 1395
 that there was to be no conviction & therefore that
 a person released was to be deemed at common law as
 well as if he was convicted and received

110

If it is stayed the prosecution shall not compound 24th 1397
 the prosecution until the next term appears in 6 1st 1398.
 shall have
 spreaded not then without leave of the court 1st 1398.
 is discretionary with the 6 to give leave or not the 16th.
 & thus it is under severe penalties. In 1st 1398.

1st 1398.
 1st 1398.
 1st 1398.
 1st 1398.

But this composition when allowed by the 6 relates to the King's
 only to the prosecutor's part. and when the 6 gives indemnity
 the leave to compound it is only in consideration that the King
 that part of the penalty which belongs to the King
 shall be bro't into comit. The part belonging to
 the King can never be compounded.

(66)

Qui tam pro re.

And after verdict found him to be p. and a
comp. was given except on the ground of the deft's
extreme poverty
stra 107.

We have in Court no. 10 similar to these two

3. Banker If a pig in a popular action dies, where with
the deft. draw or suffer a non suit the state may proceed
to 105b with the prosecution & commence a new suit.
3. 10 162.

2. Banker But where the penalty is given to the party
injured by the offence & he discontinue the
105b. suit the king cannot continue the suit. nor
commence a new suit. In does the right of
action go to the representative of the party
injured.

If in such case part of the penalty is
given to the party injured & part to the
king & the party injured dies pending the
The king may sue for his part by the atty
genl by commencing a new suit.

When several offenders are convicted on a prosecution for the same offence in some cases the whole penalty is recovered of each of the offenders & in other the whole is recovered of all or the penalty is joint.

Interdict.

I of punishment are in their nature several but in 1819 each offender is to suffer the whole penalty except 1800. It when the penalty is given as a satisfaction to the party injured by the offence, there is a compensation & therefore is the object in such case only one penalty is liable to be recovered from him a sufficient recompense to him the injured party - this rule holds unless the words of the stat clearly require each to pay it & the whole penalty.

And if when from the phraseology of the stat it clearly appears is apparent that the legislature intended only one single penalty for the whole. Ex "He or they shall forfeit & pay £" contra "if thus he or they shall respectively pay" or "he or they shall each or severally pay £" The intention of the legislature when found must undoubtedly govern but the difficulty is in ascertaining the intention & for the purpose of ascertaining the intention these rules are given.

When the phraseology does not decide it is to be borne in mind that at least each offender suffers the whole penalty & this rule must of course prevail unless good reason can be shown to the contrary which is to be sought for in the intention of the legislature.

3 But where the language of the St seems to contemplate but a single penalty, yet if
 Comp 610 the offence was punishable at some & so that
 the St is cumulative the penalty under the
 St will be several - The St being merely
 cumulative it must have been the intention
 of the legislature that the same persons
 sh^d be punished and punished severally
 as at C L.

If debt is brought however ag^t several debtors
 14 C 2010. for the penalty of a St only one penalty can
 2 East 584 be recovered on acct of the form of the
 4 Hef 137. action & therefore debt sh^d not in such
 be brought, but a special action on the
 St sh^d be brought where there are several
 jt offenders & the St requires a several penalty
 and it has lately been decided that debt
 in such case will not lie. - It will not debt
 lie ag^t one at a time?

Sometimes any number of continued acts ^{may} constitute
 Comp 610 but one offence in such case only one penalty is to be recovered
 ag^t him who has committed these continued acts. Eg^t
 ag^t performing secular business on Sunday. Suppose a man so
 labours thro' the day & makes stops for meals &c thro' the day
 labour is but one offence. This is a matter of recapitulation
 not a matter of several acts.

2 Keb 781. In popular actions according to the English law the Pf
 1 Salk 206 is not entitled to costs unless it is expressly given by
 1 H 13 L 10. St. These actions are not within the same St. giving costs.
 1 Jac 42. But where the penalty is given to the party injured by the
 4 Mod 126. offence the Pf is entitled to costs as in an
 4 SM 17. ordinary civil action -

Costs.
 Tullock In this state when the prosecutor recovers he is always
 on costs. entitled to costs & is subjected to only if he fails

Husband & Wife. (No 1)

Introduction.

The subject matter of science for law is divided into two great kinds rights & wrong & the two objects of this law is to define & enforce the ^{positive} and to prevent & humble the latter. — First it is necessary to understand & ascertain rights, these rights are of two kinds.

birds + leaves + roots of trees + things are plants 植物
+ humans. Persons are natural or civil (artificial)

The rights of man are considered in their natural
is an individual
influences upon the kinds of absolute & relative. the 18c. 23.8
absolute rights are such as individual property independence 29. 134
in the of the regulations of civil society & these
absolute rights comprehend the rights of personal 2136 1.8
security, a personal liberty, & private property.

And the civil relations from which these relative rights result are either public or private. These relative rights upon public nature vide 12C. 146—
The private relations from which relative rights & duties result are four viz those of Hus: & wife, those of Parent & child, Canadian & alien, master & servant These are usually called the domestic relations.

Mariage

2dly 188. Mariage is regarded by all as a contract in
 18432. Roman catholic countries it is otherwise. The immediate
 18440 effect of marriage is the legal union or unity of the
 parties for to many purposes husb & wife are regarded
 as one person (not always however one)

Requisites of the contract vide postEffects of the contract

I As regards the husb's right to the wife's property.
 The general principle which regulates this branch of the
 subject is founded on the husb's duty to maintain
 & protect his wife & her property becomes so far
 by as to enable him to discharge this duty. Besides
 the policy of the law requires that the husb should ^{control} have the

2dly 435 The husb by marriage becomes in general the absolute
 (exceptions) owner of all the wife's personal chattels in possession
 paraphrasing. As personal chattels in possession is meant a chattel
 sole & separate - distinguished from a personal chattel in
property protection which is a right to recover by action
 something not already in possession - and nothing is
 necessary to be done by the husb to consummate his right,
 18441 357 B.C. her personal chattels in possession he may dispose at
 18442 209 pleasure. he may bequeath them even from the
 18443 13 wife or give them away. He is the absolute owner

If he has interstate the representative of the wife
 18444 117 have the personal chattels in possession she owns before
 marriage or which came to her during marriage

Husband's right to his wife's property (67)

The hus. has the control of property wh. she holds in another right. but he has no beneficial interest in it. he must therefore account for it. *Ex. 115*
Indeed if a man marries an Ex^r he opens the trust. *Ex. 284*
She has the legal title to the property precisely as *Ex. 115*
if he was the executor.

He is also entitled to such personal chattels in possession *Sack 115*
as accrue to the wife during coverture. He is invested *Sack 115*
with all her interest in them. Thus if a debt *Ex. 115*
share in an intestate estate accrues to the wife during
cov: the hus. has all the right in the same wh. she would have
been entitled to had she been sever.

He is entitled to the avails of her labour precisely *Sack 114*
as if earned by his own labour. *Ex. 114*
1 Ex. 290.2

2 With regard to her personal chattels in action the
hus. may dispose of them at pleasure during them. *Str. 576*
It lives he does not by marriage become absolute *3 W. 65.*
owner of them but he has the legal power to *Ex. 115*
make them his own during cov: he must to convert *Ex. 115*
them absolutely into his own reduce them into
possession or do something equivalent to it during *Ex. 115*
them it lives unless by a will before he has disposed
them. This last exception prevails only in Equity.
If he does neither of these & the hus. dies first
the wife surviving is entitled to them,

(68)

Has right to her wife's choses in action

If he does not then receive them into possession
then we go to her personal representatives ^{by 29} of the law
the husband living was it not for the 29th Car.
side post

1 Bl 575.

1 Jac 201

2 Bl 433

1 Ch 21

Comp Dig

Stat 2.3.

Rec in Chroq.

in case of her law is undoubtedly as above is
Tabl 173. by the law of Coun^t they do on her death
go to her representatives (post.)

1 Jac 201

Feller Ex¹³⁴ By St 31 Ed 3 + 29 Car 2. The H^{us} is entitled to discontinue
373. on the choses in action on her death + 1. 29 Car 2.

2 Bl 433.

1 P M 14.

1 Ch 36.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

1 Ch 21.

We have no so similar to 29 Can 2° & Here if a husband's married woman dies before her husband leaving choses in Wife, action they go to her representatives & if the husband takes administration he must distribute to her next of kin. This is the opinion of the professions & clearly correct tho' there are no authorities.

But the husband cannot during the life of the wife bequeath choses in action unless he has purchased them by a settlement because a bequest is not a disposition of them which takes effect during the marriage. See in case of sale & apportionment &c. Co Litt 351.
1 Bro 289.
H & T. C.

The husband tho' under the 29 Can 2° is not as administrator bound to distribute her choses in action yet he must pay her debts to the extent of them. So a married woman can sue for debts &c.

But both these rules contemplate a settlement husband
made before marriage. But when a settlement wife,
is made after marriage it will ^{not} be deemed a purchase
if there is an express or implied agreement to that effect
effect and the of a C. of Chancery during the settlement Robt. H. 288 (u)
adequate to her rank & fortune &c.

And a C. of Equity can apportion the chose in
action to the adequacy of the settlement.

A C. of Equity will not bind the wife by
her contract unless the contract is perfectly
reasonable, leaving great discretion with the C. of Eq.

Arrears of rent due to the wife while sole stands & 6081 a
at court on the same footing as choses in action. 162 a. H.
but by 32 Hen 8. By marriage the rent due to the 357 a. 1 Ch. Pl. 21.
wife becomes absolutely the husband's. (post 79) 2 Bl. 404. 5
E. 47.

In New York it seems arrears of rent due to
the wife dum sola must be sued for by hus. & wife 237.
& wife jointly. But for rent accruing from 15 John 479-
wife's land during coverture husb. may sue 2 Taunt 181
alone - (so of an annuity Revere DR 19. Owen 3.. 1 Ch Pl 23. 21.)

If a debtor of the wife is sued by the hus. & wife 10 Mod 174
jointly & judgment is recovered agt him they are joint
tenants of the judgment & the consequence is that 3 40. 19 h. 9
either of them die before collection the survivor 1 Bac 293
takes the whole. 18 id. 337. 1 Vern 396.
1 Ch Pl 21.

It has been said that so in this state. But here on
the death of either the survivor takes one moiety &
the representatives of the deceased will take the other
moiety in Court. There is no just necessity

(72) Husband's right over wife's choses in action

Municipal The hus if he survives both here & in Engl has the sole right of collection so if the wife survives, but in Comm each must account to the representatives of the other for one moiety - This is the common case of a remedy's surviving to the survivor where the survivor must account to the representatives,

Co C 205

Salk 116.

2d Reg 1058

Baill H 15.

1 Sid 337

1 Br Bl 21.

If either die after ^{in England after policy jointly} party but before ex^r set will not issue with a seire fra - vide title Co

3 Tr 44

2 Atk 208.

420

3 P M M 199

1 Br Bl 44.

Ret 76 295

1 Fonb 308.

5 Lm Chy 195

The hus may assign the wife's choses in action during the coverture if for valuable consideration (in equity, for choses in action are not assignable at law). The reason of the rule is that the assignee can claim only in equity and as a voluntary assignment is inequitable quoad the wife that he will not support it. -

1 Anno 750

Ret 76 295

2 Atk 125

1 Br Bl 44.

2. 6. 295.

not rule

It has been held that a voluntary assignment is such as not a voluntary assignment of the chose in action into reception. but this is not law.

There is a kind of absurdity in saying that an act which is void as being inequitable quoad the wife sh^d yet defeat the wife.

But the hus. may release the wife's chose in action? Husband
with consideration for he has the legal power Wife -
 disposing of them as he chooses and a release 25th 208
 operates at law & a C. of equity cannot destroy it 17th 308.

If the hus. himself is compelled to release the wife's chose in action 12th 308, 310
 to obtain possession of his chose in action that C. 409
 will not, in such case, be in his favour, & the hus. - 10th 308
 will make a reasonable settlement on the wife. 10th 308

Where bonds &c are in the possession of
 trustees, - this rule of trusts supposes that the hus. 15th 308
 the hus. has not purchased the wife's chose
 in action by the hus.?

If it is the apigree for value of the choses in action 12th 308
 is deemed to refer to value the C. him not 25th 408.
 unless he unlawfully make a reasonable provision 4th 308, 326.
 as the choses are in the hands of trustees & the apigree 20th 308
 for value applies to the C. to have them apigreed by the Par. 11 325, 6.
 trusting to him that C. will not decree in his favour 31st 308, 316
 unless &c -

If the ^{Hus.} dies before the ^{wife} the choses in action of his estate 30th
 not purchased are not liable for his debts, neither 1st 308.
 unless he has been they be taken in Eq. for he may 30th 308
 for they are not his & choses in action cannot be
 taken in Eq. the first reason is hardly be
 suff. with the help of the second. vide bottom
 of page 75 of this title 20th 308, 310, 316
 & 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

(74) Husband's right over wife's property bailed

Husband The personal chattels of a feme sole which are
Wife in possession of another by bailment a finding
1 Ed 172 they on marriage become absolutely his & he
1 Dec 641 may sue for them in his sole name, (some
1 Vent 261 confusion in the books on this subject). The rule supports
Op D 576 merely a bailment by deposit where she has a right,
Bac Abv goods belonging to her, in the possession of another
B & C by bailment a finding, namely when there has
been no unlawful taking a conversion as in
her constructive possession, and therefore they
are his and if they are afterwards converted
he must as I think sue alone. but in the books
there are 3 opinions on the subject - vide post #

37 L 331 But if goods belonging to a feme sole have been
converted during her feme sole ship she must join
with the hus in suing for them for in this case
her right at the time of marriage is clearly a
chose in action.

1 Ed 172 *The three opinions mentioned above are these
1 Dec 167 I she has may sue alone III may join the wife.
1 Nov 261 ~~III~~ must join the wife. But he must sue alone
37 L 331 (says 2 Ed) Was there a right of action in the wife
at the time of the marriage? certainly not, though
her right was not a chose in action, then ~~there~~ ^{she}
must have been in her constructive possession of so
that they become absolutely his & he must sue
alone -

Husbands right over wife's chattels real, 97

If one is bound by contract to the hus^d to pay Husband money & to the wife the bond is subject to Wife the control of the hus^d. part to her will 372 331.
cannot discharge the contract but the contract gives
no other right but money to receive the money.

The bond is as if to the husb^d she had. 372 331
is the obligee in this case the contract
being to bond the husb^d must see alone
deed inter partes &c. vide "contracts"

Chattels real.

- 372 354

Over those where vested in wife the hus^d has 372 354
a more extensive right than over her share in 372 354
where they are liable during the marriage to the
husb^d's debts. may be taken in ex^o. This supposes 372 349
that the wife's title is a legal title. tho' in Court
in some case an equitable interest may be taken
in ex^o. vide "Ex^o"

they are not absolutely in the hus^d by marriage
How then can they be taken in ex^o for the hus^d's debts
the hus^d has power in law to assign
them for the pay^t of debts as then he has the
power the law will dispose of them in favour of
his crs.

(76) Husb. power over wife's chattels real,

Husb 24 During the l lives he has an absolute power
Wife to dispose of them & if they are not disposed

Co Litt 351 of during ev & an dies the whole goes to the
stra 516 survivor. they are quasi l tenants of his chattels

Proc in l 440 real

2 Bl 434.

Co Litt 466.

Arg 235 In this state on the death of the wife the
335 law surviving it has been decided that the
Wrights & go to her representatives. This was by the old
Chittendon & of errors & perhaps w. not now to know this
Rever's DR is not the rule of the C L & where at C-
22:24 there w: be a l tenancy our C^y make a
tenancy in common. but according to the rule in common

Proclamation By C L neither the hus nor wife can devise her
2 Ven 270 chattels real. For the right of the survivor
2 Bl 434 is as in other cases of l tenancy superior
Co Litt 351 to the right of the devisee

1 Mac 286 In this state it w: seem from the case above
1 H 253 that the wife might devise them.

Bro E 257 The hus: may by act executed dispose of them
1 Roll 334 during the marriage to next in l after his
death. by lease or assignment. for this is not
a testamentary disposition it passes a right of
future enjoyment. this right passes instantly,

They are not liable for the hus^d debts after his death if the wife survives him. like every other case of a tenant the right by survivorship is paramount to the right of creditors it is prima, as by devise the husb. could not charge them with the paym^t of debts the crs. not do the same thing

shall be as they do for the wife debts of (H) he dies first. on the same reason. His right of tenancy is paramount, by survivorship.

But how then can he be liable to her debts if the case of Evans & Chittenden is law.

Suppose a free sole being a tenant of a chattel real with a third person & then marries & then dies the stranger surviving has the whole of the chattel. But in this case the husb. has during his life the same power to sever the tenancy as she w^d have had had she remained sole.

The Hus may during sev: assign the wife's chattels real over in equity, with consideration. This, does not mean that that C will enforce such an assignment as ag^t the wife. It means merely that the C. sh^d cannot set it aside - the assign^{ment} being good at law & if C cannot set it aside

1 Nov 7. 18
2 Nov 27
3. P. 11 Nov 34
Robt. C. 299-
301

(78)

Husband
Wife,

1211

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that will right over the real estate of inheritance
or this during the marriage the husb has the sole
control & use tho' it be he cannot alien them, tho' he
may alien during coo.

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1211

In can the husb & wife by this not alien her inher
itance except by fine & convey recovery. or the not
or supposed to be under the control of the husb her aliening
is more void & therefore than it has is the deed of
the husb alone who cannot alien her inheritance.

In this state, howev er the estate of the wife may be
aliened by the deed of the husb & wife jointly. not by
any deed but by a stat which seems upon
the practice re.

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If the husb during coo grants a larger estate than
for his own life time is no forfeiture tho' she other
time for life by so doing forfeits their estate.
In the coverture of the wife disables her from claiming
the forfeiture of the husband. Does if she sh?
revert the husband's right in? instantly commence
as of an estate acquired by the wife during
coverture, can wife then claim the forfeiture of the husb 78

1211

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1211

1211

In such case the grant will inure as a grant for
his life & during coverture according as he is or is
not entitled to coverture.

109

1211

1211

And if the husb makes a lease it will be
valid as long as the husb lives if he is not
by coverture if not until wife dies,
& by statute husb & wife may make a jd
2 years lease for 3 times of her inheritance.

(79)

If the Hus dies first his real estate vests ab^o Husband
 in the wife on the other hand if the wife Wife
 dies first the inheritance devolves immediately to the hus & so
 on &c. the Hus if the wife has by her a child so sett 30.
child born alive during the life of the wife 2 R 126
capable of inheriting is entitled to a life estate
 in the wife's inheritance. q uel sh is in in in

And the Hus is entitled in such case to conting Part 112
 in the wife's real estate as in Equity of Redem 115.
 1 R 63

2 R 126

In quodkind the Hus has conting with open to
 the tenure of land as granted by the charter is
quodkind but in adit in Con the 1st rule
with respect to conting

If the birth of a child capable of inheriting to Co sett 30
 the Hus is lost by conting institute & it is con 2 R 28.
terminated by wife's death.

But accruing out of the wife's real property any part Co sett 30
 goes to the survivor at Co But Co Hus of the 1621
has accrued before coverture the hus is 4 Co 31
entitled to it. (ante 71.) And 692
1 R 115

(10) Husband's right over wife's real estate.
Husband & feme covert cannot hold property
Wife to her sole & separate use and tho' she now
1 Feb 74:8 may yet it is by virtue of the law of Chancery
10th 270
1 Pon 103

Property held to the sole & separate use of
the wife is such as she holds excepted from
all marital rights whatever. & Chancery
protects this property at all events & under all
circumstances to every extent

2 Ves 191. At this time a gift to her sole use is protected
665. in Chancery agt the claims of the H. & she
1 PM 79. can not have courtesy in it nor indeed
316. any rights whatever,

1 PM 126.

1 Feb 74:8.

10th 270

1 Pon 444

1 Feb 74:8.

2 Ves 695. Even such prop^y the wife in equity may exercise
1 Pon 444. as absolute a power as if she were sole with
(10th 270) the single exception that she can't devise it,
30th 393. directly if it is real property. & this by the 2d
695. 24 Hen 7th

3 PM 337

Pon 150.

165:6.

Convent.

847 p. 1.

But the wife may make a testamentary disposition
of it by way of declaring a trust to & then
voluntarily devise it. vide post & 10th 270.

Husband & Wife (1/2)

The Hus: cannot by his disent defeat a gift to the sole & separate use of the wife ^{4.2.9} but he may defeat any other gift ^{or purchase} when made to the wife - In the wife's name & disent is by marriage taken from the wife & stated in Winn Case

See note in
350
See 303
B & 55

But he cannot defeat a descent of property to the wife for the law sets the descent & no disent is necessary in such case - the wife if a female sole c: not by disent defeat the descent,

See note in
350
2 Ki 200
Common & R. 30

The wife's power of disent is now suspended during coverture & she may after death of her husband disent from a wife any purchase made after her death & the disent (or disent) of the Hus: does not bind her after her death

See note in
350
Lays 4.15.
Common Law
B. & 12
S. p. 12, 200

But suppose the Hus: disent & she survives with his disent bind her. or can she by spending make it her own. I think not. If after a valid disent the offer does not bind the person who made it & the disent of the Hus: is in law valid

rights of the wife ~~and~~ the hus^d property

Husband

Wife

2.21.5.5

Tolent⁴

2.21.5.5

1st In every state here & in Eng^l there is a
right of distribution ^{11 Cha²} under which if he dies intestate
 leaving issue she is entitled to one third of the
 personal property of the husband; and if he dies
 leaving no issue she is entitled to one half of the
 personal property of her hus^d — this distribution
 is made after debts paid,

Hus^d may by will defeat this provision for the wife

By & the wife is entitled to a life estate in all
1/3 of all the inheritable property of her hus^d 129
even if he died intestate at any time during her life.
 and, with issue upon which she might have had
^{by any possibility} could have claimed whether she has actually
 had issue or not. — vide title Dower, and estate
Dower

And the Hus^d cannot at all by any reversion 10 Co. 149
 bar the wife of this right, for she may have her share 2.21.5.5
by joining with the hus^d in fine of recovery 140
not by joining in a deed with him of the for Dower 115
the reversion of the wife is merely void.

(4) Wife right to Husband's property, Dower,
Husband In the St of N. Y. she may
Wife bar herself by joining the hus: in a deed &

in those states the wife is interrogated as to it
being her sole act & free act &c &c.

In this state the rule is that the wife is entitled
to a life estate in one third of the real estate
whh he owns at his death & therefore the hus.
may by his own deed bar her right of dower.

When she does not bar herself then the rule
is that if any issue whh she might have had
could have inherited any real property of that
real prop^y she is entitled to dower but not
otherwise

St. 53

C. 2. 131.

If then an estate is limited to A & to the heirs of
his body by his wife B. his wife C. cannot have
dower of this property

76070.

56098

76014.

Nov 108.

Probac 463.

Co Litt 223.

Don & Dower C

is entitled her to dower however she must have
been the wife of the dec: husband at the time
of his death. If divorced then a vinculo

matrimonii she can't have dower for such
a divorce under the marriage void ab
initio & the children are illegitimate

If divorce a mensa et thoro does not bar her
if dower for such a divorce does not destroy
the relation of hus: & wife. the children are
not illegitimate & therefore may inherit

If the husband was at the time of marriage & death under the age of legal consent the wife is still entitled to dower because the marriage was but voidable & has not been avoided for he could not avoid it before he became 14 & after his death it cannot be avoided for it is an universal rule that a marriage cannot be avoided after the death of either party.

He must however be over the age of 14 when he dies or she is not entitled to dower. but she can not be too old to be entitled to dower.

2 Bl 131.

Litt 336.

Co Litt 33

40a

1 Roll 675

It was anciently held that the wife of an idiot might be endowed but the rule is now altered. 2 Bl 130 & it was always held that the husband was not entitled to courtesy when the wife was an idiot.

To entitle the wife to dower the marriage must have been legal

1 Lev 41.

Dulle 136

Exp^t Litt 125.

When a husband dies under the age of legal consent the wife is not entitled to dower.

67

* The H^o cannot by divorcing ~~any~~ his ~~own~~ estate ~~but~~ Husband
 her right of dower nor can he do it by any more Wife.
 of alienation wh^{ch} is to take effect after his death.
 (cannot) ex H^o makes a deed to take effect
 after his death this will not defeat wife's right
 The Husband was owner at his death

X The Court if a man dies without issue leaving a widow unable to support herself & who has no relatives obliged by law to support her. the heirs of her hus & his devisees are bound to support her during widowhood if the dowry to is not sufficient.

The wife is not entitled to dower on her husband's 20th Feb
equity of redemption. She is entitled of course 1st Feb 20
a case in which the mortgage is made by the 3rd Mar 20
husband before marriage. Feb 1880

Table 3D_x

1862 158.

五

1 Br 6 226.

12th Oct 1886

In this state the wife is entitled to dower in Went 537
her husband's estate & description of an estate in Johnson
for simple. So also in New York Johnson

(191)

How Dower may be barred?

Husband Her right of dower is barred by a divorce a
Wife, vinculo matrimonii — again by alienage. this
2 Bl 130.67 if a man ~~man~~ man is an alien. in such case
It is usual to obtain a private Stat: enabling
her to hold dower

If indeed a foreign woman becomes naturalized
she has dower as a natural born citizen.

Co Litt 32. Again Her right of dower is barred by adultery
1 Roll 680. adulterant. this is a stat rule. the principle
3 P Wms 276. is that a woman ought not to be allowed
2 Bl 136. to claim any right ^{on account of} ~~from~~ italien the laws
of wh she has violated. —

If Hus in his life time has been attainted of treason
the Wife loses her right of dower for the heir
at law loses his right & the widow can
have dower where the heir loses their right to
property. For she holds by a species of outinfeud-
ation from the heir.

2 Bl 130.6 At and by felony of the Hus the wife is barred of
dower but by hed 6 this is altered.

These last two rules cannot apply here for
such a rule not be contrary to the course of
N. S.

Con. U.S.
Art. 2. § 3. p. 2
Lays "Constitution"
Art. 1. § 15.
Con. U.S.
Art. 1. § 9. p. 3.

At C. L. the widow forfeits her dower by retaining
the title deeds at least denying the detention &
if she pleads falsely the bar is perpetual
exigat; she brings an action for her dower
& the other pleads Detention of title deeds
& she denies, & the issue is found against her the bar is perpetual
if in an action brought to recover the title
deeds by the heir she pleads that she does not
have them in her possession & the plea is falsified
by verdict she utterly loses her dower.

Park. 256.
360.
5 Co. 75.
2 R. 1. 6.
4 Co. 157.

Again if she claims in fee or for the life of any
other person than herself such an attempt is ipsa
facto a forfeiture - this by C. L. the rule is a
C. L. rule

2 R. 1367 (C. L.)
3 Co. 30.
Title 3. 415
C. L. 257.
2 R. 274. 5.

She may also be barred if her dower is sought by
a jointure from the husband (see last)

2 R. 137. 3
1 R. 173
2 R. 455.
140

Down & Cow barred?

Husband
Wife,

106.447

2 Dec 134

140

She may bar her dowry by joining in a fine
a recovery of her husband's estate the
principle is not that a feme covert can convey
away her own inheritance or bar her right
of dower by conveyance - but in the single
instance of estoppel. the word precludes her
from asserting that she was a feme covert at
the time.

We have a case that a total divorce shall bar
her of dower only when she is the party cause
of the divorce. - For it seems to imply that
a feme covert living about from the time of
the time of his death with his consent & without
just cause is not entitled to dower -

The criterion then in genl is this if the
wife procures by her application a
divorce, she is entitled to dower -
(in addition to her alimony) unless she
is a party to the divorce by procuring the divorce
that she dower.

(22) Wife claims to Husband's property Paraphernalia
Husband But whether property shall be paraphernalia
Wife is property to her sole & separate use must depend
on the intention of the donor.

But where articles of this kind are bequeathed
to her by the husb. they cannot be regarded as
property to her sole & separate use - she takes
as legatee merely - of course these may
be subject to his debts. It is not even
her paraphernalia in this case.

20th 394 Where articles of this kind are given by the
husb. during their joint lives, there are not regarded
as to her sole & use. The rule anted in comptrol
gifts is made at the time of marriage in
which case the rule is diff.

Paraphrase of 2 kinds II Apparel & bedding
II plate & female ornaments.

Dell 74.
2 R 435.6
Common Lg
B. 7 7 3

The power of the hus during his life over the 2^d shall 711
wife is absolutely at his disposal. but he can't br. ca 250.
alienate them formerly he might. B 343.
the hus: during his life may dispose of the 2^d clasp 2 R 77
as he pleases & formerly he might bequeath them - 2 R 388
but as the law now stands he cannot 398.
2 R 136.
12 Nov 750.

But the 2^d clasp may be taken in ex^t by the br
of the hus

But the 1st clasp cannot be taken by his br nor 2 R 501.
can the hus dispose of them - the wife contemplates 2 R 436
merely necessary apparel & bedding. Indeed the common
selling of all her apparel has been held a B. 7 3
misdeemeanour - necessary means suitable 1 Dell 74.
to her rank.

With regard to 1st clasp in bond there is no need to
went to Ex^t. for we have a st provision all
protects them from ex^t both before & after husband's
death.

(94)

Paraphernalia 2^d claspCush^d

Wife

2d cl 104

3d cl 384

395.

1877/78.

The 1st clasp are appts for the pay^t of debts in the hands of ex^rs be when there is a deficiency of other personal property not before. & as to this clasp the claims of the wife are paramount to all rights except those of ex^rs.

But there are cases in which when the wife's paraph^{er} is lawfully taken for the pay^t of debts she is entitled to compensation out of the real estate of the h^us in the hands of the heir.

2d cl 104.

77.

3d cl 384.

395.

If specialty br take the 2^d clasp in ex^rs she is considered in ex^rs as a creditor up to the h^us's t^otal & for the brs have now taken her prop^{ty} when they might have taken the land & her right to the 2^d clasp is preferred before the right of the heir.

2d cl 104. But if the 2^d clasp are taken in ex^rs for the pay^t of simple contract debts she cannot then have indemnity from the heir. But in count this distinction does not prevail.

2^d clasp of paraphernalia,

(95)

A settlement a jointure on the wife before marriage if excepted to be in consideration of the exclusion of all her demands on the husband's property she has no claim on the 2^d clasp. Same if made after marriage in consideration of agreement made before marriage.

Crust?
Wife
2 Vern 49
83.
4th (2) 642.

But a settl. a jointure made after marriage is not in pursuance of articles made before marriage tho' it contains the clause "in bar of all demands" or "in bar of paraphernalia" will not oust her from her claim to the 2^d clasp.

It has been held that she has the same claim as if the devise of her husband's lands as if the heir where her paraph. have been taken to pay the husband's debts by specialty bond &c. - This rule has lately been questioned. tho' I cannot see why a devise sh^d. not stand precisely on the same footing as a legacy,

3uth 395
1 PMm 730.
Toller 231.
H22:3.
2 PMm 554 (1)
2 Vesey
3oth 435.

If the husband pledges these paraph. during his life to a bond on his death she & not the Ex^r has the right to redeem & if after the payment of debts there is a surplus of personal property she is entitled to it to redeem the paraph. -

But if the estate is insolvent the Ex^r may redeem

The widow's right to claim property as part of
 the inheritance of the husband is strictly personal
 & if she then does not claim them her representative
 after her death cannot claim them. And if the husband
 had bequeathed them to her for life & remainder to a
 third person & she does not assert her absolute
 claim to them, but, as merely her own to come
 claim them after her death.

In some cases in addition to her distributive share of
 the personalty she is in certain circumstances allowed
 the widow a certain share of personalty &c. this it
 in the of Probate has been very much extended.

Husband & Wife (1803)

1. The Husband's liability for the wife.

He & she are jointly liable for her debts. 2.
for her torts. 3. sometimes for her crimes.

If the Hus & Wife are jointly liable during coverture
for the debts due from her while sole. but his
liability ceases on her death unless a debt has
been recovered ag^t them before her death.

Reg. ca 60.

1 Bl 443.

Exp. Dig 122.

7 T R 345.

3 Ch R 116.

But if judgt was obtained ag^t Hus & wife for any of
her debts while she was alive the judgt converts
the debt due from the wife into a joint debt.

^{before the husband's death.}

If then she dies before judgt obtained the b^y must
leave his debt unless she leaves ag^ts and the
rule holds pending the suit. & even after verdict,
1 Bl 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Exp. Dig 122.

If he dies first & she survives she becomes sole
debtor unless judgt has been obtained ag^t hus &
Wife: & the 4th 2 of the husband is not liable.

3 D M 134

7 T R 347, 350

Exp. Dig 122

The principle of the hus. liability is this, & that by marriage loses much of her property, she has no means left by which to secure herself from arrest & imprisonment.

12 R 486 Hence she cannot in any civil action on assault
2 R 270. process be held in custody, or arrested alone and
talk 115. if arrested alone she must be discharged on scout
1 Mils 449. non bail

3 Mils 124.

Comyn Dig

B 47 (y).

60 322. But this rule does not hold when she has been
3 R 414. sued while sole & marries pending the suit. in
Coff Dig 322. such case as she was held to bail rightfully she
Wilm 314. cannot by her own act discharge herself. in such
case the br may proceed agt her as feme sole &
she is liable to ex^t alone & may be taken & com-
mitted on ex^t alone wif

Leath 30. But in such case the br may by a scout for attain-
2 Mod 170. an ex^t agt hus: & wife jointly.
1 Wilm 315.

If the hus & wife are both taken on mesne process
for a debt or tat of her she must be discharged ^{2 Bl 290}
on com. bail & she must be kept in custody the ⁷²⁰
until he has obtained substantial bail for little 120216.

If she is detained by arrest in violation of
these rules she may gently obtain her liberty
by motion to the Court to ask the process
returnable: if necessary she may be discharged
by Hab. corpus.

But she cannot be discharged on motion when
she was sued & arrested alone unless the coverture
was notorious. still less if she imposed upon 2 Bl 2903.
the Plf by pretending that she was feme sole 720
when she contracted the debt in both these
cases she must plead her coverture.

x If she will she be discharged on motion when her 2 Bl 2901.
hus is an alien & out of the process of the Court 140116
Still in this case she may plead her
coverture & be discharged, 2 Bl 290116
2 Bl 290116

But when a female covert is arrested alone
 on final process we see 24th up to M^r she
 cannot be discharged unless there is collusion between
 1237 P^r & the husband. So upon final process
 the wife is out of the question on narrow process
 3 M^r 24. the object of the law is fully answered by
 holding the husband to bail & both to trial
 1237 but on final process the object is diff^r.

If H^u & wife are both taken on final process she
 is then like every other debtor in prison.

Husband's liability for her torts

5 M^r 114. He is jointly liable with her during co^h for
 the 1237 her torts committed by her while sole & the
 1 M^r 114 rule is the same where she alone without the
 6 M^r 301 direction approbation or consent ^{a presupposition} of the hus
 376 commits a tort during coverture.

They are jointly liable for her torts only
 where the wife is both in fact & in justice of
 law the only guilty party & there should be
 joined in action only where the proper
 reply is "she is not guilty".

on torts committed during cohabitation of
her to his commenced even in his absence.

for torts committed jointly with him, for torts 1 Roll 341
committed by her in his presence he alone is 600 Bar 157
liable 225 H.

In each of these cases the tort is considered as 355 ad 481.
a sole act. the wife is supposed to act by his & R 28.
consent, & the presumption cannot be rebutted. 1 Hunt 314.

When they are jointly liable during cohabitation for her 2alm 13
torts, she continues liable after his death if she 600 Bar 366
survives him. In such cases the husband's 514 374
liability ceases with the cohabitation so that if
he survives the wife he is not liable & if he
dies first his representatives are not liable.

Where he is liable alone for torts committed by
his wife the action must survive agt him
and not agt her.

Husband's liability for the crimes of the wife.

- In case of simple theft committed by the wife thro' his coercion or in his presence he alone is liable. The reason for this exception to the genl rule that the wife is liable for her crimes tho' committed thro' the coercion of the husband is I think to be sought for in the doctrine of the benefit of clergy. simple theft being a clergyable offence. But by some authorities Burglary is within this rule. But burglary is not a clergyable offence.
- 1 Hale 45.
4 Bl 29.
Kelling 31.
1 Hale 45.

- But when a female covert commits simple theft voluntarily both in fact & in law she is punished as a female sole & the hus. not liable at all and it is said that if she commits the theft by her command but in her absence she is not excused but in such case he is necessary before the fact at least & can be punished as such.
- 1 Hale 45.
Kelling 41.
14 Bl 29.
1 Hale 65.

- Where a mere misdeemeanor is committed by both she is liable jointly with the hus-
band.
- 10 Mod 63.
4 Bl 29.
1 Hale 314.
5.

For crimes of a higher nature than simple theft as treason murder robbery &c if the offence is committed jointly they are both liable 1 Hawk 4.
 & if he commands her both will be liable 4 R 29.
 &c &c

1 Hale 110.

1 Hale 65.

If she inquires the penalty of a felony at the time 1 Hawk 5.
 liable (alone) for the crime was committed &c 2 R 29.
 & if she is to be sued together for the penalty is regarded as a debt (the only support
 the penalty to be incurred before execution. In)

She cannot be an accessory after the fact in case 1 Hawk 4.
 of the felony &c if the husband on account of 2 R 451
 the favour whl the law gives to that relation. 4 R 29.

Because she is bound to obey him,

In all cases in whl none of these exceptions apply 4 R 72
 she is liable for her crimes as a feme sole & her husband
 is not liable

1 Hawk 4.

1 Hale 110.

1 Hale 65.

Wife's power to bind the husband by contracts made by her during coo: The power is said to be founded on an agent's exp't a implied but the law is frequently bound by her contracts when he expressly refuses his agent. & if the law gives public notice that he will not be bound on her account yet she can bind him for food, clothing, lodging & medical assistance if he refuses to provide them. His agent in fact is then not necessary in all cases to his being bound.

2^d Lev 4 The principle on which he is bound for her contracts for necessaries is that he is under an obligation to provide her with things suitable to her rank & this obligation the law will enforce & therefore for form sake the law implies a promise.

1 Bl 429 There are four cases indeed in which the wife may bind the husband on the ground of agent.

1 Roll 350. I Where he expressly agents before the contract

II Where he expressly agents after the contract

1 Bl 430. III Where a married woman usually provides necessaries for herself & family & the husband has been in the habit of paying for them. Then the wife is said to have a genl authority, The husband here gives an implied antecedent agent to all contracts of the same kind afterwards made unless he withdraws his agent.

1 Sid 128.

IIII Where necessaries provided by her come to the use of himself or family Ex a married woman buys an article of dress & is made up 3 East 333 into a garment wh^{ch} is worn by her or by or 1 Sid 120 of the family or by himself. For by permitting these to be used he gives an implied agent subseq^t—

On all these cases the wife acts as agent to the husband & ^{these} are precisely the cases in wh^{ch} a servant 1 Bl 430 may bind his master. The wife binds the husb. Stra 1214 in these cases not in the character of wife but 2 Vent 155. in the character of servant-Agent—

1 Roll 351

1 Sid 107.

120. 126.

When a feme covert has been in the habit of making contracts of a particular kind & the husband ratifying them he gives her what is called a quilt credit. & the credit cannot be determined by any private prohibition the prohibition must be coextensive with the authority given.

2 Vern 643.

1 Bl 430.

1 Show 95.

The same rule applies to a common servant.

If the wife not having a quilt credit purchases articles with the husb^s knowledge & pays them the husb is not liable for the article.

Salk 118

Ed Reg 1006.

Espo Dig 123

1 Bac 300.

Rever DR 145.

(106) Power of wife to bind Husband by her contracts

Husband If however the wife has worn the article
wife, or any of the family has here is an implied
agent subsequent & then if she pays ^{it} makes
no alteration with his obligations. He must
suppose indeed that the husband knew the fact
that the goods were worn by the wife or family
or knowledge is necessary to raise the implied
agent subsequent.

1 Dm 153 If a feme covert pays her gun, clothes &c & takes
1 Ed 350. money to redeem them the husband is not liable
Exp Dig 123 for the money.

65k 606 These rules however suppose that the husband
4 Sum 2178. is in no default or neglect in supplying her with
Salk 110 necessaries but if he turns her away for any
1 2d 6139. cause except incontinency he is at all events
1 Hen RL 348. liable.

Str 875.

1200 & P 339

226 (p)

6 2 603

1200 & P 339

But incontinency is a suff. cause for turning her
away & if he does so he discharges himself from
all liability for her contracts.

But if he turns her away for any other cause
no prohibition either ~~except~~ or ~~imposed~~ public
a special will discharge him from his contract
for incapacities.

Sack 115
Stra 1211
Exp Dig 124
Solv 293. H

If a man lives with a woman as his wife allow-
ing her to assume his name and treat her as his
wife tho she is not de jure his wife he incurs all
the liabilities of an actual husband.
In an action then agt the hus' ~~then~~ for incapacities
provided for the wife the plea "never joined in
lawful matrimony" is bad. This rule holds tho'
the Def knew that she was not actually the deft's
wife. Solv 295.

41
Ballot P 136
Exp Dig 124
Sack 437
1. How B 15 (a)
Solv 296.

The rule is the same where an action is brought
agt husband & wife for tort committed by her
Indeed as before stated he incurs all the
liabilities of an actual husband.

Comp 141.
473
Bar Abi
B 12 (a)

And according to some he & she may join to recover
for debts due to her & when the hus. is merely de
facto, & not de jure. ~~old~~ Barre. a person having
a right of action can't join a stranger with
him how then can the wife ^{de facto} join a stranger
with her for hus de facto merely is a stranger
& tho a man may incur liabilities by an illegal act
he may not to acquire rights.

11

(108) Power of Wife to bind Husb.^d by her contract
Husband But where a widow brings a writ of
Wife dower the plea never joined in lawful
matrimony is good. So in case of an action
by law for crim. con. the reason why L. Chanc.^r
gives for the last rule is that this is a crime out
the true principle appears to be that by an illegal
act no rights can be acquired.

12 L. Rep. 444 If Hus + Wife part by agreement, husd. is not
2 Do 106 bound to supply her with necessaries that is
1 Salk 116 is not liable on her contracts for necessaries after
12 L. Rep. 126 it has become known in the place where he
6 L. Rep. 147 resides that they have separated.
12 Do 244
4 L. Rep. 207 This rule supposes that the Hus has allowed the
6 L. Rep. 207 wife a separate maintenance. The
12 L. Rep. 207 principle is that the separation with the main-
tenance is a revocation of the joint credit
given by the marriage.

(111) Before the separation is fully known in the
place where he resides the Hus is liable, as tho'
no separation had taken place. Therefore
the wife is liable for her debts, as tho'
no separation had taken place, as tho'
no separation had taken place, as tho'
no separation had taken place, as tho'

If the wife has made an adulterous
elopement the hus. is clearly not liable
on her contracts (after the elopement has
become public) — according to some it is
not necessary that the elopement sh. have
become public. But I think that the latter
rule is contrary to principle — This is a private
revocation of the genl credit given by their
marriage. — As between the hus. & wife the
elopement is a perpetual forfeiture of her
claim upon the hus. Not so as between
hus. & wife & strangers until it is public,
And after elopement if she offer to return &
the hus. refuse to receive her he is still not
liable for her contracts for necessities for such an
elopement is a perpetual forfeiture of all her
rights as wife.

Salk 118
6 Mod 171
Exp Dig 125
1 Bi 442 13
Stra 447 875.
1 B & P 338: 9
1 Stra 447. 706.
62 R 603
1 H Bi 348.
14 L. Cas 4444
Exp Dig 125.
12 Mod 214.

But when the elopement has become notorious Stra 75.
when the elopement continues it makes no difference whether the elopement was adulterous or not.
a rev. But simple elopement merely suspends the rights of the wife to be furnished with necessities but is not a perpetual forfeiture & if the wife after wards offer to return & he refuse to receive her he is afterwards liable on her contracts for necessities and his prohibition to the contrary notwithstanding but a prohibition to certain individuals will discharge him from her contracts with those individuals after such misconduct she may not elect creditor for the hus. — (see 107)

Salk 118.
Exp Dig 125.
1 Br 696.
5
Exp Dig 125.
1 Br 299
300. 290.
Stra 75.
1204
15. d 109.
4 Br 217.
10 Mod 124.

(110.) Wife's power to bind husb. by her contract,
2 Bush 204. The case is diff. where a hus. permits a wife
Wife to remain in his own house notwithstanding
her adultery in such case the hus. is liable
1 B & P 226. on her contracts for necessaries provided the
Stra 147. 706. person trusting her did not himself know of
6 T R 603. her guilt. — For by leaving her in this
1 Salk 119. situation he gives her a prima facie
6 Elms 171. credit

2 R L R 1079 Tho' the hus. is not liable for her necessaries
1 Paul 46. during a simple elopement still she is not
8 T R 547. liable for she is still under the legal disability
Esp Dig 125. of a wife. — The C. in this case trusts
Stra 875 (2) at his peril. —

1 B & P 338 It was once held obiter that if the elopement
(post 110) is adulterous the wife may bind herself
But she cannot by her own misconduct acquire
any legal ability or impair the husband's
rights.

When the husband is absent but in such circumstances as to make the husband liable for his wife's necessities it is said that the declaration should state specifically that the goods were delivered to his wife &c. but I think that according to principle there can be no need for this specifying declaring since declaring as for goods delivered to him generally is declaring according to the legal effect.

If the husband actually provides for the necessities himself then he then has a right to prohibit the public at large, individuals & individuals from trusting him on his account & under these circumstances the husband can never be liable.

In the same way he may transact and credit Salic 11 already given her by a public notice but the notice Salic 11 1066 should be coextensive with the credit.

On the other hand he cannot deprive her of necessities the by some cases of recurrence she may deprive herself of the right of being trusted on his account but in all other cases she cannot be deprived of necessities & if the husband refuses to provide them she may obtain necessities on his credit any prohibition notwithstanding.

If she leaves his house in consequence of such thing, all that need be tendered is what she can for her 35s 7-8. To remain in his house, this is equivalent to 2s 10s 1/4, turning her away - the hus. is liable for her 12 mo 1/4 necessities. (no case precisely in point). (Vide analogous, 12s 1/4 1800 cases cited in the margin) the rule is highly reasonable. Sup 6th if thus treating her is virtually turning her away. Fair? 6th

7 Exp. R 441. Conyue Con. 8

1 Selw 209. 3 Taunt 421. 1 Selw 207 (a) 3 Exp NPC 251.

12 M 453. For money lent to the wife the hus. is never liable Prec in Ch unless where the money is actually expended for necessities & then only in Chancery, but at law 50c. the hus. is never liable for at law the contract must bind a not bind a vinculo & the injury act does not alter the contract but in Chancery the lender stands in the place of the vendor of the necessities & will recover to the amt of the necessities furnished. But if a recovery is had at law the whole must be recovered a ct of law cannot split contracts. — To mean of infants

Husband & Wife (104)

When husband & wife separate by agreement & the husband agrees to supply her with necessaries &c. — 22 V.L.R. 42.
 but where the husband does not duly pay that allowance his liability is revived. The condition of his exemption from liability is broken —

How far a female covert can bind herself by her contracts? A female covert cannot bind herself or her property by any contract whatever. This is a general rule & the principle is that as the law has in favour of the husband deprived her of her property & of the control of it she is as she ought to be discharged from all liability.

106.42

120.34

121.44

124.359

124.336

345.6.

120.6.101.

If she might bind herself by her contracts she might be imprisoned & thus the husband's rights violated.

And if she could bind her property the property might be taken away & thus the husband's rights to the property violated.

A reason frequently given is that the husband is supposed to force her to make contracts & that she is under the coercion of her husband.

(114) Can a wife bind herself by her contracts.

12th 6907 And the wife's contracts are in general
absolutely void & not voidable so that
2nd Mth 1144 to her bond she may plead non est fact.
Salt 7
2 R 293

Comp 201 x But if a woman having signed & d^d a deed
& b^d 20 during coverture survives the husband & redeems
or the deed or does that which is tantamount to
it the deed binds her. for the redelivery is
the same as making a new deed at that
time & the deed takes effect from the redelivery

7th R 478. Her leases are only voidable & is therefore
1st Feb 131. capable of ratification with redelivery
Comp 203.
Dug 53. This exception is allowed for the sake of
2nd R 776. agriculture. this rule supposes that the lease
2nd R 127. was made by her alone. her hus may at any
3rd Bar 304 time during the coverture avoid it
Crof 563 (or a bond. note of hand &c are utterly void)
2nd Hag 110 (19) But the wife during cov cannot avoid it but
1st to 43. after cov she or her representatives may avoid
1st Hed 241. it
Hed. 225.

Hen & d^d Enall, Hus & wife to make a lease for
21 yrs whl shall be absolutely binding

If a married woman enters a lease of her land & survives her husband & ratifies the lease she is liable on the covenant.

For the ratification validates the contract ab initio,

husb & wife

1661/3.

1661/3.

1661/3.

1661/3.

Note of

1661/3.

x If lease is made to husb & wife & she survives, after his death she becomes liable on those covenants which run with the land. (114)
 Secus collateral covenants. Her purchases are regularly only voidable but she can become liable only in virtue of her estate, the collateral covenants are unconnected with her estate & therefore do not bind her, Rol 349y.

If an obligⁿ is given to husb & wife she after Comyn's death may waive it in all cases & will B 7 (1) unless entire to the Rep^s of the husband. 1 Roll 244y for the diffrnt operates by relation,

If husb & wife are made tenants in common she after his death may disavow to the purchaser & in this case the estate will issue as an estate in common B 7 (2) ally to the representatives of the husband.

For by the waiver her interest is gone ab initio,

(116)

How far wife can bind herself by her contracts

Each case

Wife

3622

the estate of husband was by hold a
land which w^d not be subject to a claim
must appear on the records of a court record
but an agent may be shown to have acted
managing the estate as by entering & taking
the profits.

Left page

Each case

327(11)

the estate is considered to be the wife's to
be the wife's to be the wife's to be the wife's
moiety - For the husband & wife are only one
in law & in this case make but one grantee

Co. 117

117

117

117

117

of real property is conveyed to her & wife by
made with as between strangers w^d create in the
conveyance the husband & wife take as joint tenants
vide it is settled -
R. 1864

117

of fine & writ may, making valid conveyance
of lands in performance of a condition where
the condition is that she shall make the
conveyance & when they are granted to her
on this condition - Here her privilege
w^d be an injury were not this the rule
she can come to prevent a forfeiture

at time court may bind her sole & husband
 separate property by her sole contract even wife
 while living with the husband &c. In the Feb 90:1
 husb. has no control over this property. 102.

1 Ves 517

2 VR 162

1 Bro & L 16.

the extent of this rule then is that she can bind 2 Ves 190
 this property in Equity. The reason why she is 2 Atk 377
 not bound at law is that if she could bind 1 Dou 103
 the property according to the rules of law she 1 Bro & L 16
 would at the same time be personally bound & 1 Atk 334.
 thus the husband's rights be violated but 2 P W M 144.
 a to of equity acts directly in unit & in equity 2 VR 162.
 & therefore may proceed so as not to interfere with the marital rights. 1 Bro & L 156.

but because she has such property she cannot post No.
 subject herself to any personal obligation thus
 if she gives a note if hands a bill of equity will
 not apply the separate propj to this debt.

If she has property in trust to her sole & sep- 17 Feb 193
 use she may dispose of it as the wife of 1 P W M 660.1
 trustee unless their joining in the conveyance 1 Ves 517
 was made necessary by the grant under which 2 Ves 190.
 she claims. then indeed their joining is a 1 Bro & L 17. g. 2.
 cond. precedent. - But otherwise a C of C
 will order the trustees to convey the legal
 title as she has done her Equity.

118/ How far wife can bind herself by her contracts.

Wife

2 Ld 134

507.

1 Poul 675:7

1 Vern 104

1 Esp 127

1 Ld 1047

1 Corbett 132:2

1 B & P 337.

2 Ld 231.

1 H Bl 346.

1 Salk 110. 46.

2 Es R 564:17

1 Bos & P 357

1 N R 80

2 Bos & P 233.

1 East 304 (4)

the rule is, when a husband is abroad the wife may bind herself by contracts as a feme sole. So if the hus^d is banished, during the banishment, or if the hus^d is an alien enemy during the war she is a feme sole. so far as regards her power to bind herself by her contracts. She may sue & be sued a such suit may be granted & will be valid & enforced abroad. - The hus^d in all these cases is regarded as civiliter mortuus. In each of these cases there is no reason for treating her as a feme covert. She hus^d rightly cannot here be injured. & besides for her own safety she ought to have the power of binding herself. The rule was once held to be the same where the hus^d was a foreigner & had remained for some time abroad. sed Quare the rule seems now to be abolished - (post 119.)

distinction between native & foreigner

Moss 666.

1 Poul 676.

So where they have been separated a woman at those she may contract as a feme sole for the hus^d has no rights over her &c. and she may sue & be sued but cannot marry.

1 N R 5.

And it was once held that if hus^d & wife separate by agreement with separate maintenance that she might at law bind herself & her property as a femme sole. In that case the contract was not for negotium. In Equity it is agreed that she may bind her separate maintenance.

1 N R 545 }
Marrill v Rutton }

But this rule in 1 N R 5 is overruled. It has been s^d that Marr^t & R^u does not in precedent overrule 5 N R 612. 2 Bl R 1079 1185. Corb^t & Pollock but this is a mistake 6 T R 605. 4 T R 766. 1 H Bl 634. 347. 8. 350. Brk^t 377. 1 Esp 26. 2 New L 146. 163.

Husbod

The first case relating to this was just given
 was Baird & Brooks in that case the Husb^d was with his wife
 the woman but has separated by agreement & ^{she} has a separate maintenance the contract was for 1 P. 679: 30.
under which it was held that she was bound at law on this contract 1 P. 679: 30.
1 P. 679: 30.
1 P. 679: 30.

The Lady Langborough case. where she the Countess
Langborough. Except that Lord Langborough Exp. 210
in England Lady was held liable at law for recept 2 Ex. 355.
cases preceded 17 L. 5. and were the foundation of 1 P. 679: 30.
the decision in that case. Exp. 210.

Subj^t to that case where the Husb lived abroad the 1 P. 679: 30.
wife traded as a female sole it was held that
she was bound at law. This was Million 13.
O'Case,

These cases countenance Baird & Brooks 17 R. 5.
 but they do not come up to it. but now
 all these cases Baird is settled. Baird & Brooks Exp. 1 P. 679: 30.
Langborough + 1 34 P. 357 are overruled. by the 9 East 417.
highest authority. — The consequence is that 11 East 30.
 now Wife living separate by agreement is held 1 P. 679: 30.
liable at law on her contracts unless in case 1 P. 679: 30.
of banishment be. (ante 118)

& Wife's separate real property is bound in equity 1 P. 679: 30.
by her contracts only by an express agreement cases 1 P. 679: 30.
the property. It is not liable to her personal agreements 2 4 R. 103.
Even the she live separate from the husband with
separate maintenance.

(120) How far wife can bind herself by her contracts.

Husband owned property & the rule of her real property
Wife held to her sole use may be applied by

1 Brk 201. a Ct of Equity to the discharge of her debts
tho there be no express agreement concerning the property.

1 Brk 21. But when in her own the decree is never in possession

Rever & Rye - swearing in case

5 Cr 47. and in all cases of education & separate maintenance

1 Cr 103. it is generally sought not to bind the wife in her own

a 113. contract part is the only proper form

4 Cr 266. of joint contract being separate from the husband

6 Cr 204. with separate maintenance is not binding on

5 Cr 62. her contracts when at law in equity &

(ante 110)

1 Cr 418. & But if a joint contract alone in the sole name

1 Cr 43. and a fine is suffered in consequence of

1 Cr 300. bound to pay the debt however long at

2 Cr 636 any time during the coverture before the death of

1 Cr 541. the husband or after the death of the husband

1 Cr 622. the wife by contract she being no party is

1 Cr 5. not stopped by the record to deny her

coverture,

1 Cr 302. if she has a fine of her own the husband is not

1 Cr 466. having defeated it she on his death is liable

1 Cr 443. on the assessments of her property in the same

1 Cr 43. And if husband & wife join in a fine to

2 Cr 145. both are bound by it,

1 Cr 302.

This is regularly the only conveyance by which a feme covert can at all alien her substance. but she may now virtually alien her inheritance 1^o by Executing a power over a use & this is effectual to the vt law & in Equity.
 2^o by a declaration of trust but this latter mode is effectual only in Equity

Husband
 Wife
 2 Tr 2695
 1 Tr 300
 Pol Dev 150.
 2 Ves 190.1
 6 Bro 6186.
 16 St. 180.

But in neither of these cases does she as the law regards convey her own property unless the proceedings on the face of it is a conveyance by her of another's property that is merely the creation of a naked power.

Now a feme covert may at all times create a power or authority over another's property. thus a power of atty and on the same principle she may execute a power retained by herself over her own property & thus she may convey & virtually alien her own real estate but to enable her to do it.

2 Ves 191
 42 St 46
 2 Tr 2695
 Pol Dev 150
 6 Br 2616.

the form in the first case is that of a declaration of trust. the form of the second is by executing a power over use. the proceedings is thus a woman before her marriage conveys her real estate to AB to the use of herself for life with remainder to the use of such persons as she shall by any instrument in writing or in law or otherwise appoint.

Now she may make a will in form appointing her children or others to take this use & the appointees take the remainder after her life estate. they take under the original deed of settlement to use.

(122) How far wife can bind herself by her contract, &c.

Husband It by declaration of a trust the diff between this wife and the former is that the word trust is used for Bond 150 the word use. It is thus a woman before marriage and indeed conveys her estate to trustees in trust for her separate use during life & in trust for such persons as she shall by her last will or by willings in nature of a will appoint. When she may make a willing in form of a will disposing of what she takes under the original deed — (this is only in equity) See Bond Dec 149

150. 165. 6. as before the appointed take under the original deed. So if she makes an express agreement to make such agreement or settlement 2 Ves 192 this will in Equity be equivalent to an actual settlement — In case of a declaration of trust it is necessary that the trustees she convey to the assignees trust the legal title & thus a C. of Equity will compel them to do.

All these machines are however of no use here for here by St a genuine covert may devise her real estate.

2 St 490. (a). But in Equity she may become the her personal property under a bare agreement by the husband that he shall be her separate (she may retain it) not so if the contract is avoided by the marriage —

The St of wills does not affect personal property & therefore this may be done. But that St expressly disables her from devising real estate the personal property in this case is indeed proper to her sole & separate use.

(124) Wife's power to bind herself by her contract?

76 & Wife, In genl. it is that she cannot make a will of
2 BL 498. personal property. The husb's right as Adm^r
4 Co 51. might be affected besides her disability,
2 East 552. as the rule is sometimes expressed she may bequeath
2 Stra 591. property which she holds in the right of another
10 Mod 211. The true rule is that she may make will of
off^r 14th personal property which she holds as ex^r at the consent
196. — of the husband. She cannot bequeath them even with
the consent of the husband for she cannot pass
any beneficial interest in them — Godolphin 110. 11.
308. 2 East 552. 2 BL 498. — This is nothing more
than the exⁿ of a power to appoint an ex^r or

1708 98. But she may in equity bequeath personal property held
1 Br 116. to her sole use at law the bequest is void
1 Ves 578. for the ex^r knows nothing of property, thus hilly.

303.

3 Br 648.

2 Ves 75.

191. paraphernalia 4 Reevs 16. C. 173 — sed 2u.

4 Reevs H. C. L.

14 BL 147. But she may bequeath any kind of personal property held
1 Mod 211. in her own right with her husband's consent &
2 BL 498. even his personal property & this at law — his consent
2 P. M. 52. is the operative bequeathing act & gives validity
316. to the bequest

1 Vern 245.

2 Vern 253.

1 Mod 211 }

2 BL 498 }

1 Reevs H. C. L.

101. III. 307.

The agent to a bequest by her of personal property
 will not accrue to her after her death will not
 validate the bequest tho' she sh^d survive. Thus Mrs. East
 who her liberty be bequeath personalty to her son she
 imports her death before the prop^y accrues. The wife makes
 a will of the prop^y before her hus. The will is void
 for the husb^d can have no right to or power
 over the prop^y accruing after his death—
 His agent therefore is merely void & then
 the case is the usual one of a will made
 by a femme during coverture,

If a feme sole makes a will even after her marriage
 and dies before her husband the will is revoked. For ex^o 38 M. 614
 is special to the validity of a will that it sh^d be 4 Co. 60.
 revoked at all times revokable but during coverture 27 R. 495
 she cannot revoke it for the act of revocation is itself 2 R. 499
 he void, so therefore if the will sh^d be considered as Revoked 161—
 good she could not revoke it the law revokes it for
 her—

But suppose in the last case she had survived the husb^d 500 R. 109
 does the will revive by husb^d death. The power to 2 R. 495
 revoke has been suspended, but she now has power to 2 R. 499
 revoke it & the fair inference appears to be that 2 R. 499
 as she does not revoke it that she intended to allow
 it to stand. but the opinions are divided—

A will made by a woman during coverture is not 2 R. 495
 validated by husb^d death. but not limited to it 2 R. 495
 can become good.

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Page 172.

1 R. 495

1 R. 495

(126) Wife's ability to execute power

of form & content may execute a naked power (ant)
12/1/17 A naked power is one not coupled with an
12/1/17 interest - where she is a mere agent & no
4/1/21 right of hers or of her husband is affected

1367.

13/1/17

13/1/17

13/1/17 is she may execute a power where an interest passes
to her with the power provided the authority is substantial
13/1/17 to the husband. - does not flow from it. Camp. says
13/1/17 is devised to her as trustee to convey to J. H. her
her conveyance is valid. This is not a naked
power but still by executing the power her
own rights are not affected - she has & conveys
the mere legal title. -

13/1/17 But when the power given to a wife arises out of
13/1/17 an interest devolved to her she cannot execute it. Thus
13/1/17 in estate to a wife with power to convey, &c.
she cannot execute this power. If she could she

could dispose of her own beneficial interest. and the
law will not allow her to do.

13/1/17 If the estate
13/1/17 had been limited to her sole use she might have conveyed
in Equity by deed or virtually devised it at ante

Contracts between husband & wife

The contracts between hus^d & wife made during mar-
riage are at Co at marriage void & are made before marriage
between them are depolied by the subseq^t marriage

Gr. 10. 112

20th.

Ex. 6. 131.

S. 10. 442

The artificial reason is the legal unity. But the more
rational reasons are—

1st By their legal union the right & the obligation
is in what the law deems one & the same person so
that there can be no action between them and the law
never acknowledges a right where there is not at least an
original remedy—is a remedy at the time of making
the contract, which procures the right.

2^d If there could be a recovery that recovers a
wifely be perfectly regulated by reason of the
husb^d's right to the wife's property. If husb^d
could recover damages, a^d the wife he can
find nothing to satisfy his debt except what was before his.
3^d The policy of the Co does not allow of suits between
husband & wife.

If a married woman being the wife of a debt in an action
action, becomes Ex^t a debt of the Pl^t the suit is
done facto destructive—for the wife cannot continue
the action ag^t the husb^d. Besides the trust
depolies on the husb^d.

If after judgment obtained in a Debt & he is taken
 52 H407 in ex^{te} & imprisoned, & the wife of the Debt becomes
 ex^{te}. & ^{in bankruptcy} ~~ide~~ ^{he} must be discharged. for her trust
 as ex^{te} devolves upon the husband. & besides the
 wife cannot hold her husband in jail -

Coke Bl 25. There are exceptions to the joint rule. 1st branch of
 the rule is contracts between husband & wife during
 1200 64. coverture are void. at law they are still
 1200 64. in all cases void unless jointures be an
 1200 64. exception

Co Litt 24. A husband of real prop^y from husband to wife directly is at
 note 1. 112 void and anent in Equity. The rule is
 400 29. founded on the right of the husband to the
 1200 64. usufruct & to the impossibility of a conveyance
 remedy between them - ^{separation of rights with a conveyance} the law does not acknowledge that
 1200 64. But now in Equity a husband may convey real prop^y
 2000 316. to the sole use of the wife and thus destroy
 1200 64. with the interposition of a trustee.

Co Litt 3.

3 att 72.

1 Forb 94.

2 Vern 385.

2 Ver 669. But even now in Equity such a conveyance cannot
 be in blood be valid unless it is limited to her sole & separate use
 2 Vern 64. and from the moment when such a conveyance to her
 1200 316. sole use she becomes a female sole with relation
 1200 64. to that property except for the purpose of devising
 1 Forb 90.1. it. —

102.

2 Mag 157.

Pa. Dec 610.

Husband & Wife (105)

There was once an older person that gave her land Day 21.
not held personal property to her sole & sep. use. but 235
since decided — in Court! 1-11-1890

A deed of land directly to the wife is at 62 now but 2 Bl 337, 323.
a conveyance of real property by the hus. to this person to hold to the
to the use of the wife is at 62 valid. but the 112
it was destroyed such limitation. — 27th Nov. 8th May 1894
from the use from the legal title.

1 Bl 337
Runt 1890.
4 Co 29

Again if a hus. to encourage a wife's intention says 3 P M 337
to allow her a part of the assets of all the agreement 1 Feb 92
will be enforced in Equity. The Court is convinced Runt 1890.
as giving this property to her sole & separate use 1890

And in all these cases she may sue her hus. in Equity 1890
by her next friend and any one who will appear to her. See in Ch 1890
is her next friend.

17 Eq. ca 150
24 R 163.8
17 Feb 1897.
99.

A husband who is good at law this is a common case 1890
gift sales which is not in this is a gift to her 1 P M 337
sup. among her. 1890. The Court is convinced Runt 1890.
The gift is good as intended during his life. for this
does not vest in her until his death & is in effect
testamentary, although it is

If a hus^d covenants with his wife not to alienate
 2 Brack 37, with her property he may in equity be prevented from
 1 H Bl 374 alienating it. at law such covenant is void. for
 41 Hk 51 at law the only remedy is by action but a Ct of Eq^y
 may act in her injury of him

+

2 H Bl 384 and now articles of agreement between hus^d & wife to
 2 Vern 586 live separate ^{and} if specifically enforced on law & in equity
 671

1 Burr 502

1 H Bl 344

351.

2 Cas. 283.

1 Fent 105.

1 Burr 542

2 H Bl 478.

Conjugal

Bt 461

If then the hus^d in violation of such agreement attempts
 to compel the wife to live with him she may be
 discharged by habeas corpus ^{liberty} & if he afterwards attempts
 it he may be punished for contempt.

Bac 473

Bt 461

1 Vern 261.

He is bound by such an agreement only to the extent of
 it & by an agreement to live separately ^{he does not} relinquish any
 rights to her property

Contracts before marriage

1 Bl 402

600 b 581

2 H Bl 10

2 Bull 184

426 10.

If a man is indebted to a woman or whom
 he afterwards marries & vice versa the debt is
 extinguished and if the hus^d gives a bond to
 a woman before marriage & marries her & then the
 bond does not revive for a personal right once
 suspended is forever extinguished and cannot be

that if the obligee in a bond being a woman
marries, one of several things the whole debt
is discharged. 1. a conveyance. 2. a marriage of
course discharges the debt as between the obligee &
the obligor who marries, but each owes the whole
debt.

Brooke 351
1 Feb 43
Compt 2
B & T d. r.
5 B & C 447.

But a distinction is taken between a contract
made before coverture creating a debt on the husband
during cov. & one which does not create a debt
until after the coverture ceases.

Thus a covenant that hus. shall leave his wife & c. 20. b.
a sum of money after his death this contract
is not at law discharged by the subsequent
marriage.

1 Feb 43
Bro 571.
4 B & C 12

But if a bond is made by hus. before marriage & c. 20. b.
covenant to leave his wife a certain sum of money
at his death - And in the goods 29.
at law it is good in Equity but the husband part 2. 4th 97
creates a debt in present. In the time of 17.
state such a bond was finally determined to
be valid at law (Case & L. 1000)

2 Nov 24.
2 Nov 40.
29.
2 4th 97
17.
2 Nov 44.
2 4th 325
Compt 207.
Bart 571.
5 B & C 381.

(132)

A woman may by accepting of a jointure in contemplation of marriage ~~may~~ bar the right of dower & such an acceptance was always held valid at law tho' subject intermarriage notwithstanding — here the contract takes no effect until after coverture.

The English law relating the jointures barring dower is regulated by st 27 Hen 8th

4 BL 138

140.

And under this stat the requisites to a jointure so as to bar dower are these four.

1st The jointure must by the terms of the contract take effect immediately on the death of the hus^d.

2nd The jointure must be for her life at least

3rd Must be settled on herself directly, & not in trust for her.

4th The jointure must be expressed to be in satisfaction of her whole dower. this last requisite is the subject of some question but I think the rule correct.

Contra

4 Co 3a.

2 BL 138 Ch

note.

Formally a question is raised whether widow on a jointure effectual to bar dower might not consist of personal property but in Shellock & Shellock W10. It was determined that the property must be real property.

But that a jointure settled will not bar dower 1 Dowl 53 accompanied with their requisites but an ex parte 1 Ves 55 to receive personal property in lieu of dower may be Co Litt 3d (1) be enforced in equity. This rule is not contrary 2 Eq. ca 101 2 to the Stat for that it was made concerning Shellock & Shellock W10 legal jointures and beside the Stat will not interfere Shellock & Shellock W10 what the jointure is is reasonable.

Jointures are sometimes settled during coverture in 2 R 133 with case the widow may accept it or refuse it 1 Bul 137 and accept dower in its place but she cannot Comyns have both jointure & dower of the jointure 81 2 (1) the legal requisites 1 & by bringing a writ of 3 Co 27a dower she having the jointure. 4 Co 64 5th
2 Rose 142. Dower

If the wife agrees to accept a gift by
 devise during cor. instead of dower she may
 4 Co. 5. after death of hus^d elect either the gift or
 bro^d no. the dower.

Im. 430

Ld Ray^d 433.

Lo Ray^d 438 On the point whether parol evidence is admissible
 1 Eq. ca 219. to show that the devise sh^d be instead of dower when
 2 Vern 366. not expressed so to be there is some diversity. but it
 1 Bro 267 cannot be admitted.
 10th 430.

Lo Ray^d 438. But the the devise is not expressed to be in
 bro^d no. bar of dower yet the widow cannot have both
 the devised property & dower if the hus^d in
 devises away all his other property. for this is
 decisive evidence on the face of the devise that he
 intended it in bar of dower.

2 Vern 480: 93 And it has now become a rule in Equity that
 2 Attk 97 marriage settl^t agreements made by hus^d & wife
 1 Bar 644 before marriage are binding.
 255.

1 Fon 687.

43: 5

Right and power over the person of the wife

If a female servant is injured in her person & the hus^d sustains consequential damages the hus^d has a sole right of action for the consequential damages but not the action will not lie in his sole name with a *trespass* *per quod consortium amittit*.

1 Cor 140.

1 Ch 200

So in slander if consequential damage is sustained the hus^d may maintain an action in his sole name with a *per quod*.

1 Ch 200

2 Ch 237

Ex 127 342

4 Ann 2057

Bull 1127. 8.

Long 162

So for crimes con.

It is remarkable that the precedents in these cases except slander are trespass & not con but this is contrary to principle and in all the domestic relations where a *per quod* is laid in the English practice the action is trespass. In *con* where a *per quod* is laid the action is usually "con"

2 Ch 205

East 387

389

2 Ch 205

2 Ld Ray 1032

2 L 167

But to maintain crimes con there must be a marriage proved. a marriage de facto is not enough a legal marriage must be proved.

4 Ann 2057

Bull at 1127. 8.

2 Ann 330

1 Ann 19

Ex 127 342

4 Ld 651

1 Selw 1314

Where the hus^d consents to such an act as this there is no right of action in the hus^d. The maxim applies "volente non fit injuria."

It was once held that if the hus^d himself lying in open incontinency it is a bar to his right to this action but now it only goes in mitigation.

4 Ex 16.

1 Selw 15

4 Ex 157

1 Selw 15

As it has been held that the hus. must
 5. 257 maintain the action upon the mis. & wife live
 0 last 1844. separately & consent, but this decision has been
 1844 checked & ought to be overruled.

(126 Pl 334 an?)

But 27 If a hus. allow his wife to live as a concubine
 126 Pl 334 he cannot maintain the action. but was
 1844 15/18 not content of this kind not his husbandry
 only goes in mitigation of damages;

478 1844. When neglect to the wife on the part of the hus. will
 1844 15 go in mitigation of damages,

1844 300 The Def. may in mitigation of damages prove the conduct
 1844 27 of the wife that they lived before harmoniously.
 1844 15/18 any lapses on the part of the Def.

The Deft may prove in mitigation that the hus:
has so treated his wife

that she has a bad character & he may prove previous
acts of misconduct as a formerelopment. any prior
misconduct such before marriage
fa from the nature of the action he puts her character
in issue.

45 R 657
Butt 477
45 R 662
25 R 562
1 Phillips 140
1 Selw 308

But the Deft may not prove in mitigation any misconduct
on the part of the Plf's wife after the offence charged ag^t him

25 R 562
1 Selw 31

According to the GL the hus^d may give his wife
moderate correction for her misconduct

1 Hawk 130.
1 BL 471.
444.
1 Sel 113:16

But the hus^d now never allowed to beat his wife violently
or to threaten her with violence. if he does she may
bind him to the peace or obtain a divorce (partial)
satisfaction & this partial divorce must be made by the
Legislature (hus).

1 Sel 22
More 874
1 Bur 185

But by the modern GL it seems that the hus^d may not
use any violence towards her & if he does she may
bind him to the peace & vice versa if the wife beats the
hus^d

2 Sel 116
1 Sel 113
1 BL 447
1 Sel 207

The right of personal chastisement was first mitigated
 3 He 6433 on the time of Car 2nd & since then it appears to be
 1 Ed 13 now among the profusion that the husi may not
 1 Bl 445 beat her.

1 Stra 478 But he may still restrain her of her liberty for gross
 1 Com 513 misbehavior
 1 B & 7 (c)

1 Bun 634 But if she is restrained unreasonably a writ causa
 1 Stra 478 she may obtain her release by hab. corpus not by
 her next friend,

1 Bull 18 The husi may justify a battery in defence of the
 1 Gro 239 wife & vice versa. And it is a defence in both
 1 La Ray 61 cases precisely like self defence.
 1 Esp 213 104. 18.

How far husband & Wife may testify for a gt each other
 1 Bull 660 Their respective cannot testify for or agt one another
 1 Co 445 for they two are one flesh. But the union of interest
 1 10th 68 the action of the law are strong reasons for the
 1 La 2171 policy prevents their testifying agt one
 1 Hal 634 another & union of interest prevents them
 1 M 121 122 for testifying for each other,

1 Co 170

1 Esp 213

1 B & 443.

1 Bull 121

How far 2d Quest? & W may testify for or agt? ⁽¹³⁹⁾

He can the hus^d testify when his wife's rights are
concerned and not agt^t his own interest as where property &c. &c.
was settled on the wife to her sole & undivided use. Ex. 149720.
in Ex. 149720 him he was not permitted to testify. Phillips v. H.
that it was not his own tag by so doing he would not infringe
imposed himself in testifying agt^t his own interest.

If an action is brought by a wife the hus^d or by either agt^t
a wife hus^d & wife jointly their confessions either agt^t Ex. 149720.
how a wife herself, & agt^t both are not admissible Ex. 149720.
in evidence. & thus if testimony is brought agt^t hus^d & wife
agts for test conceded by hus^d alone her confessions
that she committed the test is not evidence
agt^t them.

The strongest reason is the policy of the law which Ex. 149720.
grants will regulate the conduct of domestic relations. Ex. 149720.

In actions from criminals the confessions of the hus^d & wife
are no evidence even not confessions of hus^d & wife
own misconduct. Ex. 149720.

In such case however her conversation with the hus^d
left no probable as evidence agt^t him.

(140) How far Husband's wife may testify &c.

Husband's wife
testified that the other
Ld Ray 792 of 2. it is so to be the legitimate son of the
27 R 268. but it is so that he was married to D before he
Ld Ray 91 was married to his mother now D may not give
evidence in evidence of her marriage with D, for this
1767 is to charge D with bigamy. or rather, it tend
18th 66 to charge him with the crime of bigamy
18th 66

18th 67. And in one case it has been held that if a
20 R 268. witness has been examined as to a fact well known to
the nature of the case must have been known to
him the wife may not be called to testify against
him in a contradictory case. But this is not
law. The only reason given for the rule is that allow-
ing her to be thus called tends to criminate him of
perjury. but tho she does contradict him & tho what
he says is not true still he may not be guilty of perjury

(Rat 1174 And a woman divorced a vinculo matrimonii
1174 may not give evidence against him concerning
facts which took place during the marriage but
1174 she is a competent witness against him as far as
18th 66 as to facts which took place after divorce. The
reason of the former branch of the rule is that if
the husband knew that the wife might be called to
testify against him it would destroy the confidence which
ought to exist between husband & wife.

It is a general rule that a party may testify husb? & age himself in open court & with the consent of Wife the other party for himself, but Hus & wife cannot see 1.2 testify for or ag each other even tho' the opposite Code 614 duty consents. But the C will not hear the Bank Ex 75 testimony. Because her testimony may eventually Hard 614 be ag^d her husb? for if she can testify in chief she may be cross examined

If a married woman brings an action as a some sole of her coverture is pleaded her husb is not allowed to testify to the fact of his marriage. Because this w^d be testifying ag^d his wife's interest. 25 R. 265.
269.
Bank Ex 176
12th 64.

Exceptions to the general rule

II. Where the husb is indicted of treason the wife is to be a competent witness ag him for the duty of allegiance is higher than the duty of wife. Bank Ex 176
This rule has been doubted and I think rightly 259.
Houlton 1 Hale 321. 2 Hank 608. Bank Ex 173 12 H. 403.
1 Ph 68. 7. 12 Hale 301. 2 2 Camp 308.

III. Coverture founded on blind incapity

Where if she exhibits a complacent ag the husb to him to the peace for volunt so she may testify & vice versa where husb exhibits a complacent ag to her the incapity is here clear. 2 Hank 552
Exp Dig 71.
13th 542
Bank Ex 173
1 Ph 68.
12th 413.

(142) In what cases? Or may testify for & agt each other.

Encl. 1. III. Where the husband is prosecuted by the wife
for personal violence offered to the wife the
better opinion is, that she may testify agt
him - there is here the same necessity as in
the last case.

1 Ch. 638.

2 Bull. 287.

2 Hawk 358. 1 Esp. 216. 1 Ryer 173. 1 Hale 301. 1 Bl. 443 (Ch. 1). -
1 East Pleas. 454. 1 Carter Ry. 1. 1 Gilbert Ex 120. 1 Holt 101.

1 Barr 543.

1 Bull. 287.

2 Ch. 1.

in an information too agt the husband for attempting
to compel the wife again to live with him after
separation or after an agreement to live separate. the
wife may here testify - agt the husband.

1 Ch. 1.

1 Esp. 216.

1 Bull. 286.

1 Ryer 174.

2 Hawk 358.

1 Bl. 443.

1 Ch. 1.

1 Bl. 117.

IV. In case of abduction or where a person
forcibly takes away a woman & agt her consent
from her to marry, the wife may prove the
abduction & then be a competent witness for this - husband
she is a competent witness for him (Ancho's decision)
If she is rejected it must be taken for granted that there
was a legal marriage so that then he is not be guilty.
If she is admitted it must be taken for granted that she
is not his wife & therefore that he is guilty.

1 Bull. 287.

1 Bl. 163.

1 Ryer 174.

1 Ch. 1.

1 Bl. 117.

V. If a man marries having a former wife
living at the time of marriage the second wife
may testify in an indictment of bigamy &
in any other case.

VI In actions between other parties the wife must^{not} has been permitted to testify in fact wh^o lay Wife, a foundation for a civil action ag^t him. but 1 Str 544 when the action is brought ag^t the hus^o her testimony cannot be used - Bull v P 287 Ex p 25 74

But where her action is: thus even collaterally to crim^{inate} her hus^o she cannot testify, 27 C 205 124 Law 752 16 C 474.

We can a wife testify in a criminal case between 5 Ex p 2107 the parties where her testimony w^o operate indirectly 24 C 656 in her hus^o favour: thus an indictment for the 1895 conspiracy ag^t A & B. the wife of A can^t testify Peake v 173. in favour of B for they w^o indirectly operate in 16 C 162.3 favour of her hus^o. two must be found guilty 172-3. or none - so if there were several def^t the wife w^o be the same the arg^ument of me w^o (consequently) affect the hus^o?

VII Declarations of the wife or subjects falling immediately within her province as wife have been admitted to be proved by other to subject their hus^o in a civil suit. But this rule applies to be anomalous and all the authority cites are to one single case. I think the rule contrary to principle. The wife's dec^o if admissible ought to be admitted as the dec^o of of an agent & so it is but the rule goes much further - her subseq^t dec^o ought not to be admitted they are not parts of the res gestae, 1 Camp 394

(144)

H & Wife,

1 East Pl 357

2 Leach CC

563

1 Ph'or.

VIII On an indictment ag^t the hus^d for the murder of the wife the declarations of the wife in contemplation of death are admissible ag^t the husband (or for him) this dec^t cannot operate until the relation has ceased - 26

This case cannot be distinguished in principle from the 3^d case - If she is a competent witness in a prosⁿ ag^t him for violence offered to her her dying decⁿ must be good evidence (where dying decⁿ are admissible at all) to prove the same thing.

Husband & Wife. (1800)

In what case husband & wife may join in a plea

In some cases when the cause of action relates to her
in her right, he & she must join. In some where she may
it may not. & she must not join.

It is a general rule that when the right of action is
devisable to the wife in the event of her surviving him she must join, but not join with him, for if the hus^d could sue alone he might attach in himself a right of recovery so that if he sh^d die pending the suit the right w^d survive to his representatives - wh^{ch} w^d destroy her rights.

Thus in real actions to recover her lands both must join she must be joined for the right of action survives - & she can never sue alone

In contract also to recover her lands this must join her terms for years survive to her in case she survives the husband.

As to the rule in such case on the wife's share in action which belongs to her before marriage she must join with the hus^d - her share in action surviving, therefore must join to the general rule they must join. (But off if a husband them by attornment sed in will a ct of law take notice of this purchase wh^{ch} is merely a purchase in Equity & besides if he is a purchaser he must sue in the name of the coproprior, contra Bro E 143 & Lev 403. Exp^t Dig 19. 7. 10 Ves 578. 1 Vern 390. 10 Ves 408.

(146) Where hus. & wife must join as p[ar]ts.

So at com[mon] law to recover what due to the wife while
C. & E. 100. sole they must join - this w^o survive like any
Co. Litt. 58. b. right of action

Conjugal

B. & F. 171

1 Roll 347. s. - 15 John 479.

8

But under 32 Hen. 8. there is no reason why she s. join
for by that st the hus. is absolutely seised with the fee.
sed 2d this is a Stat assignment & must not
the Stat assignee like every other one in the
name of the assignor viz 2 Cust^o & wife,

1 Ed 25. In a promise made to her when sole they must join.
Conjugal they the promise is parol for a parol promise
B. & F. 171 survives as well as any other, to the wife

3.7 R 627 So for torts committed upon her or her husband when sole

1 Roll 347 they must join. Thus battery, slander, libel, trespass

1 Le R 1108 but property, &c.

Ad Recus. So for injuries to the ^{person} property of the wife during marriage
1 Ed 357 they must join - (except where the suit is for consequential
Exp. 316 damage lost)

1 Wile 328.

C. & E. 501.

535. 600.

Conjugal

B. & F. 171

15 Ed 344 b

Conjugal For waste committed on her land, either before or during
B. & F. 171 coverture, they must join. The inheritance is her
10 Ed 333 & waste is an injury to the inheritance wh^o
w^o survive,

An action for injuring trees on her land they must join Roll 347
(during the coverture) for this is a permanent 2 M & 44
injury to the property of the wife, cro C 16

Comps authority do not support him State 195
in Cro C 96 the action was for cutting corn - Comps Reg
emblemment - In 2 Vent it does not appear St & C
that the injury was permanent, Pembury 277

15n 237. Ann Domestic Relations, 133. Dutton, 2 B. 16 Pick 235.

But in actions for destroying emblemment growing on the cro 133
wife's land the hus^o must I think sue alone for they 2 Vent 195
do not survive to her. It has been s^d that he
may sue alone & join with the wife +

10 Pickering 469. 18 Pick 110.

In an action for injuring grass growing on the Comps Reg
wife's land they must join for this does not belong St & C
to the class of emblemment and if the hus^o dies Pembury 277
growing the grass she is entitled to the cro 96
reparation 2 M & 44

In trover for her chattels where the conversion was 33 & 631
before the marriage she must join for at the time
of her marriage they was a shorn in action

If the chattels of the wife are found a bailed pack 114
before marriage + converted during the marriage the New 261
hus^o must sue alone. St & C not for the 12 & 107
principle but because of the contradiction in Sid 102
the authority. (a. t. 74) 1 Ch D 645. St & C 631

2 Cowb 24
Wife

Conrad 59

B 73 (x)

Conrad 459

1 Bac 304

Conrad 207

Conrad 207

B 72 (x)

Conrad 207

4 Co 57

Conrad 207

Conrad 207

B 76 (x)

15 John 479

¶ Where the husb. may sue alone a joint, & c.
joint rule can be laid down which will embrace all
Thus if he takes a distress for rent due to the wife
while sole & the distress is used he may sue alone
for the recovery or he may join the wife, & c. he may
clearly sue alone that distress is his yet he
is in sole possession - so he may treat the whole
concern as on her acct. & consider himself as agent
in an action for rent issuing out of the wife's
land, & saving cost he may either sue alone
or join the wife. I think on principle that if
the wife survives to the wife she ought to sue
but on principle the rent does not survive,
joint, but the reason perhaps is, that as the debt
arises during the marriage the wife has a right to keep
the debt as his own & to make herself her agent
see in vide ante 71 & the case in 15 John

Conrad 207

Stia 330

H. 70 016

1 Stia 303

2 Stia 290

3 Stia 297

Conrad 207

B 75 (x)

16 Stia 432

3 Stia 207

1 East 412

2 Stia 297

Stia 309

2 Plow 496

1 Ch Pl 223

¶ an obligation he is made the husband and wife
during so he may sue alone a joint, & c. for the
husb. has a right to dissent to any interest of
her or to dissent - By bringing the action in
the name of husb. & wife he agents to her
joint interest.

¶ That is be the want in such case if he make no
election express or implied. & c. in such case that
she takes no interest. the husb. operates as that
lands then given are treated as if given to him alone

If a bond is given to a man & wife in the right
of the husband he may use alone or join the wife. But if the bond
survives to her. But the husband of 184309
an estate becomes himself liable to the bond he therefore
may treat the bond as his own liable indeed to account
He may treat the wife as his own -

And in this case he may describe the bond as
made to him alone. Such is the legal effect (H.)

If a bond is given to the wife alone during coverture cor 328 103.
the husband may use alone or join the wife for the Comptrol.
husband has a right to treat the bond as any other B & M. 2
personal chattel given to the wife during coverture 2 Ves 676.
or he may apportion to her interest. 2 Mod 217
unless he manifests his apportion that she should take an
interest in ^{part} it, he may join the wife. West 432
3 Exch 366
2 Hawk 48
396. 7 n. 6

It would this bond survive to the wife. It is not 2 Ves 676
not survive (d Hard to the contrary), the bond West 432
prima facie vests in the husband alone, 3 Exch 366
1 Ch R 223.

If a legacy is given to a wife during coverture HBL 108.
until the husband. It stands on the same footing 1 Mod 179
as an obligⁿ given to her during coverture 2 Roll 134

Ed Hard^r says that the legacy w^d survive to the wife sed Pa. I think not. The whole interest 2 Ves 676.
prima facie vests in the husband. But this presumption 5 HL 692
may be rebutted by his apportioning to her interest. 206 2 C 578.
4 R 617

(150) When hus. may sue alone or may join the wife.

The same rule holds of a distributive share
1 Comt 564. accruing to her under the st of distributions. If
10th & 91. however the hus. is obliged to resort to a Ct of Eq.
576. to recover the legacy that he will not interfere
2 B & 109. unless he makes a suitable provision for the wife.
See in Ch

548. 3. Genlly this rule cannot apply in Court.
Reph 97. 233. an act here lies at law to recover a legacy
50 R 692 but if the legacy is given to a trustee for
3 P M 202 the wife, her resort must be had to Equity
2 B 635. & that Ct may impose terms
2 Br Ch 663. 3 Br Ch 195. 565.

5 Rep. 77. Still very recently however that he have never
576. interposed in favour of the wife except when the
2 Ves. 676. hus. was ~~plff~~ but it has been determined that
10 Ves. 576. where a legacy is given to a woman ^{during her life} & the hus.
Tolles 321. claims it she may maintain a bill agt her hus. &
490. the Exr for a provision out of the legacy.

Rule the same where a distributive share accrues to
her during coverture.

Cro 77205 When the wife is the plaintiff cause of action &
Comdij an express promise is made to pay her the hus. may
B & 701 sue alone or join the wife for by his agent he
bath 251. may confirm the promise according to the form of it
Bro E 61.
Cro 644. But both the ingredients must concur or he can't
2 Will 424 join her. there must be an express promise & sue must
Salk 114. be the plaintiff cause.
40 R 156.

The contract does not here survive to the wife Salk 114.
Compt & 2 B L R 1239 Bro E 61.

But when the husband joins the wife he must show Husband
 the interest in the wife in the face of the deed. Wife
 is he must show those facts will show that the wife
 has a right to join the wife. For if we see not to fact
 make such a statement as the rule requires no cause of action
 of action appears in favour of both. - Thus in the 2d 1230
 last can the Df must state that the services 1230
 were rendered by the wife & that the promise (post 153)
 was made to the wife - This rule can apply
 only to upfront or simple contracts, or at
 least to cases where the act is on a simple
 contract, tho' on a bond the bond must be described as given to her,

When they cannot join as Df

When the wife is the sole cause of action & the husband
 is a consequential cause of action, the wife cannot be joined thus 1230
 in battery & violation - If the act is for the immediate 1230
 injury done to the wife the hus & wife must join 1230

In this case however the declaration must always be laid with 1230
 a per quod & that the per quod the action will not lie in favour
 of the husband alone. The form of this action has been 1230
traced in it arise but in principle it shall be traced in the 1230
case

In a battery is committed on the husband & wife together they 1230
 cannot join in action for the violation of both, then must be 1230
 two actions one by husband alone the other by 1230
 For a deed joining the wife for a battery committed 1230
 on husband would be radically bad,

(152) When Hus & wife can join as plffs.

If however they sh^d join in an action for an injury to both & the jury sh^d find several damages on the hus^d & unwilling on the record the damages for his own battery they will be allowed to take out just for the damages apportioned for the battery of the wife before it now appears on the record that as to the battery done to the wife they were properly joined. & as to the battery on the husb^d there is now no difficulty. On demurrer indeed the fault w^d be fatal. And if the jury find that the def^t as to the battery of the husb^d is not guilty & ap^s damages for the injury of the wife & will go ag^t the def^t in favour of the husb^d & wife. — Quoad hoc the joinder was proper.

Brof 110. If the doct^r of the wife makes a promise to pay back 117 the debt in consideration of delay an action on Carth 462. the subject promise must be lost by him alone. For the consid^r moves from the husb^d & the promise is supposed to be made to him, —

1 Kan 307. Is where the wife is the party cause of action. The court says more. This seems so.
Brof 114
1 Bly 24
1 Bly 7

2 Bly 308. It is well said, if the husb^d may alone where he ought to have joined no. in may no. where he ought to see the 6 114 alone the matter is just as it now stands by statute. When there is any one cause of action declared in the declaration the wife may join & it is accepted. If there can be no cause of action such as appears in the declaration — But where husb^d & wife join for a battery to the wife per quod &c after & what the per quod will be considered as aggravation merely, in civil damages this will be bad & the rule itself is a great stricture.

1 Bly

If the wife was alone the deft. in the suit and H. wife,
 had been co-defendants in law or joined in substance under R. 217
 the suit from it must be pleaded in relaxment for
 it is once an objection to her legal ability. But if in R. 217
 such case will not up the wife the husband was over 18 & so
 the judge is well of course in favour of both if what
 goes as her on any ground except that of disability,
 because his wife cannot be bringing a suit alone in law
 the marital rights.

If hus & wife join in an action founded on contract Colt 57. 12
 and the declaration shows no interest in the wife Sub 185
 it is ill on special demurrer & it seems on quill demurrer Delock 111. 10
 thus if the action is brought for cutting trees on one land Bro & Hill
 it must appear that the land was his.

In this case the declaration will be aided in
 context for the interest may be his - as the contrary
 does not appear the court will presume that it is so. But
 on quill demurrer the declⁿ will be ill - there are
 two p^{ty}s & only one of them appears to have any
 interest. This is matters of substance - In Cro 64
 it was held that the defect was not aided by
 verdict & on principle I think this is the
 better rule (ante 151)

(154)

Husband
Wife

In what cases they are to be sued as debt
jointly &c

1 Bl. 443

3 Mod. 136

6 Co. 140 566

Co. Litt. 351.

7 R. 341.

10 Mod. 331.

1. Nels.

281. 440

If the cause of action is such as w^h survive
ag^t her if she survives her hus^d, she must be
joined, as debt. for otherwise the representatives of
the hus^d might be injured. For if by law the Pl^{ff}
might sue alone the hus^d alone he w^d attach in
himself a right of recovery & if hus^d dies pending
the suit he w^d then be liable when by the rule
of law he is liable during the coverture only.
If then an action w^h not to recover a debt due
from the wife while sole she must be joined.

Co. Litt. 133.

351 (6)

Common Dig

B. 47. y

10 Mod.

When an action is bro^t for torts committed by her
while sole in the same.

Co. Litt. 133.

Common Dig

B. 47. y

10 Mod.

When suit was due from her before coverture in the same
this is like every debt due from her while sole,
but in some wherein the wife was liable before cov^{er}
she must be joined with her hus^d as debt. for in these
cases the action must survive ag^t her.

Common Dig

B. 47. y

In real actions to recover lands held by herself & her^s
as her she must be joined.

Bro. C. 301.

1 Mod. 149

Sta. 1207

Common Dig

B. 47. y

1 Roll 6

In torts committed by herself during coverture with
her^s jointly both must be joined the action surviving
ag^t her—

If a lease is made to hus & wife during coverture
the action for rent according during coverture must be
by both. for the rent follows the interest and the
interest will survive to her if she survives him. 2 Co
purchases are only voidable & she cannot avoid
the lease during coverture

Comyn Dig
B4 f 10
1 R. 2. 345
Buc 307

When the cause of action is one with or not surviving
the wife in case she survives him the suit must be
against him alone.

If a feoffment being a life, renders the land must
be sued alone for rent according during coverture She
must have survived agt the husb. only. For the husb.
during coverture has the whole benefit of the lease,
but if a feoffment is not agt hus & wife or there is
promise or bond it is law for her promise & bond is
are absolutely void the husb must therefore be sued
alone.

Reg 6.
Comyn Dig
B4 f 10
1 R. 2. 345
Buc 307
Palmer 343

If a battery or other tort is committed by hus & wife
jointly or by her alone there his coercion or in his
presence he must be sued alone. If the doct
then alleges that the tort was committed by hus
wife it is incurably ill and indeed in all cases of
this kind together for a tort if the doct
does not show that it was committed by the wife
alone & it is incurably ill.

Brooke 355
B4 f 10
355 or 401
Comyn Dig
B4 f 10
1 R. 2. 345
Buc 307
Palmer 343
Baker 1
Comyn Dig

(156) Where hus & wife are joined as defts.

And if both are sued for a tort and the jury find that the hus was not guilty but the Comyns says in the per dict does not rule the imputation for if the tort was committed jointly the wife cannot be liable.

crof 203.

1 Wils 70.

6 Crof 661. In towns up^d hus & wife the conviction must be laid to the use of the hus^d only for a conviction to their use in law is a conviction to the hus^d use.

According to those rules a verdict will not save the defect. but it checks this a strict rule. The rule itself is purely technical - and the use is more matter of form - yet the rule remains unquestioned in the books.

Hele 116. Where the wife is improperly joined a verdict as to the wife may be pleaded in abatement but if she is improperly joined it is error & the writ of error will prevail in abatement a motion in arrest of judgment will prevail after verdict. so if she is omitted where she ought to have been joined a motion in arrest will prevail. for the defect appears on the record. & the defect in these cases will always appear on the record.

Ang 614. If a feme covert being sued alone pleads coverture & prays she may have judgment for costs in her sole name. the hus^d may however after 40^d being a serjeant at law pray for & obtain an E^x in person of his wife but not with respect to her for then there will be an inconsistency.

When a woman is sued jointly with the h^{us}. she
 can't plead alone but must join with the h^{us}. he
 can appoint an atty for both or he may himself plead as J^{es}g
 for both but she can't appoint an atty alone. but Exp^{ty} 30.
 when she is sued alone she may plead alone from the
 necessity of the case in the h^{us}. shouds voluntarily Long 611
 appear whh he may do & plead. for the H^{us} having
 sued her alone can't object to her pleading alone

(158.)

Celebration of Marriage.

H & Wife Marriage is not by the law of this country a civil contract
but regulated by the municipal law.
1 BL 433

1 BL 439. 40 It is required by the English law & now that some publication
the man. in public the celebration. in some this is required

Where either party is a minor there must be both a public
and consent of guardian to

The persons authorized by our law to celebrate marriages
are Bishops & magistrates as justices of the peace
in their respective counties.

In some: If a marriage is celebrated in violation
of the law requiring public & consent the marriage
is good & the clergyman is liable to a penalty.

1 BL 435 (a) It is the prevailing opinion that two persons may not
439 make a valid marriage contract with the interposition
Bac But (a) of Clergy & magistrates. But B. & think this opinion
incorrect, & is now in relation to the law.

Under the 1670 Act such marriage is clearly invalid & void. - It is true before this statute the B.C. n. 4th 18 prohibit the ecclesiastical Ct. from declaring such marriage void,

A marriage act has lately been passed in Engl. 4 Geo 4th

When a marriage has been celebrated by a private individual & both the Ecc. Ct. have refused to grant admon. to the parties.

Marriages not valid are void or voidable & the 1 BL 434.5.
impediments, w^h render marriages invalid are canonical or civil. the former are provided by the civil or canonical law. those are consequently affinity, insanity & previous contract. but the latter imped^t appears to be abolished.

Consequently, Affinity & insanity as impediments 1 BL 435.6. are derived from the divine law & are mentioned by Bac. 4th the 1670 Act. Hence the questions relating to these B & (a) impediments being canonical are cognizable only in the Spiritual Courts.

A marriage within the Levitical degrees is invalid 1 BL 435. here said in Engl.

(160) Impediments (Canonical)

Husband The 31st 4th 11th states that nothing Canon law
Wife except such prohibited marriage with those degrees
is a marriage with the not prohibited by the
divine law shall be good so far as to canonical imp
And the question has been what the exception contemplates
the probability seems to be that the exception applies
to ultracites. for this is an impediment by
the tertical law.

Co Litt 33 The canonical impediments under the contract
1 Br 434. only voidable & it can be impeached on these
441. accounts only during the life of both parties.

Salk 548.

Therefore the legitimacy of the children can't be tried
on these acc^{ts} after death of either party and if the
Ecclesiastical be attempt to do it Bth will interfere
by protection. - Hence the maxim that no
one can be declared illegitimate after the death of either
his parents - The principle is that the infidelity of that B.
is pro salute animarum. Besides the mode of
impeaching such a marriage is by decree of
divorce & divorce cannot take place after the
death of either,

Husband & Wife (1897)

Canonical impediments

All persons linearly related to one another either by consanguinity or affinity are prohibited to marry by div. law. & this is the municipal law of Engl. & this state,

among collateral the most distant prohibited degree is that between uncle & niece uncle & nephew. & whether they are thus related by consanguinity or affinity makes no difference.

All who are collaterally related to one another then by consanguinity in the 4th or in any more remote degree by the civil law computation may lawfully marry. But those related to each other in a degree nearer than the fourth can not intermarry. Hence consanguineous may intermarry - they may in the 4th degrees.

Can a man marry his deceased brother's widow? it has been usual for such parties to marry & in Conn. by statute it they may marry. This is an exception to the genl. rule. But till of late this was not admitted tho' truly there is no difference in principle between this & the next case.

Marriage between a man & the sister of his deceased wife has been very common and this appears to be an admitted exception to the genl. rule.

(162)

Impediments

764 Mife

1 Salk 14

548

1 Roll 300

but 271

1 Br 440

Tho' a marriage is within the Canon degree is invalid yet if no divorce takes place during the life of the parties the children are in Eng^l legitimate. Tho' if a divorce is obtained the children are illegitimate, for the divorce operates retro-actively & under the marriage ab initio void.

In Court such a marriage is absolutely void & the children are illegitimate & the question may be tried at any time. - Such are the express words of the Statute, no divorce is necessary

In Court in such case the parties are subject to severe penalties for the crime of incest.

Salk 548.

4 Br 648.

1 Br 435

In Eng^l: the crime of incest is cognizable only in the spiritual Courts. It is not a civil offence

1 Br 435

Civil impediments are 1st previous marriage. 2^d Want of age in either party. 3^d Want of consent of parents &c. 4th Want of reason.

These it is s^d in Eng^l: render the marriage ab initio void. but this requires some qualification (prob.)

Hence no divorce is necessary in these cases

22 Ch 458. 4

By 4 Geo 4th &c (post) this rule attracts the 3rd case,

Civil impediments.

(163)

II. Pre existing marriage. In such case the 2: 1 Bl 436.
marriage is not only void but the marriage is 4 Bl 164.
an offence punishable by the temporal lty. It
constitutes the crime of bigamy.

Want of age. the age of consent is 14 in males &
12 in females. at these respective ages a marriage is 60 Litt 74
may be valid. but if either party is under that 1 Bl 436.
age the contract may be ratified & there is no need
of a subseq^t solemnization. It remains valid unless
the party departs after arriving at the age of consent.

In such case the parties may rescind it without a divorce

If one of the parties is under the age of consent at the time of marriage either party may depart until the
other party arrives at the age of consent and ratifies
it. The contract to be binding must be
mutually so.

But in a contract to marry in future if one party
is 21 and the other under the former may be subjected
for a breach of the contract the latter not.

The want of consent of cohabitation or parent is no imp^t 1 Bl 437.
at C^t but made so by Stat. till a year or two
past this imped. made the contract utterly void. but
by 4 Geo 4 the contract is not void. 581 4

(164)

Impediments, Civil

1 Roll 357 Want of reason. the marriage of an idiot or
1 De 438. unatic is void. an idiot must forever remain
unable. but I think that a lunatic in a lucid
interval may ratify. or at least he may marry
in a lucid interval

Marriage within the prohibited degrees is absolutely
void & the children of such illegitimate (in bonis
matre)

In bonis: the want of consent of parent he does not
make the marriage void. the person marrying the
parties in such case is liable to penalties.

The impediment of previous contract was never known
in bonis. & it seems not now to exist in Engl

2 HBL 147

1112.

Bull NP

1114

2 Burr 1080

It has been a question whether a marriage celebrated
in another state by parties residing in this state
& who leave this state for the express purpose of making
our law is good if it conforms to the law of the
state where celebrated. It appears to be good.

Divorces

Divorces are of two kinds, a vinculo matrimonii 1 BC 440
and a mensa et thoro the first is a complete
dissolution of the contract. the second does not
dissolve the relation of hus & wife but merely separates
them. the first is total the second partial.

In Engl. a total divorce can be obtained only for some of 1 BC 438
the canonical impediments & those existing before marriage 440 (441)
for total divorces are in Engl. granted only where the marriage
was at marriage ^{voidable} (in Ct of justice) (since in Parliament).
These causes of divorce are cognizable in Engl. only in the 1 BC 439
spiritual court.

When a total divorce is granted the issue of the 1 BC 440. 438
marriage ^{becomes} illegitimate. For the divorce nullifies 60 Lett 235
the marriage ab initio. 1 Roll R 358. 60.
1 Bar 264
Bast (H.C.)

The causes of partial divorce in Engl. are adultery, 1 BC 441
cruelty & ill-grounded ^{of great bodily injury} fear. These may be granted also in
the spiritual court. But for these causes by a
special act Parliament often grants a total divorce
especially for adultery.

In case of a partial divorce the wife is in quod intelle 1 BC 441
to alimony which is applied by the spiritual court. 1 BC 441. 2
and if wife is not moved in accordance with the
decree an action lies at Co to obtain it. founded
on the decree.

Divorces

In case of an adulterous elopement the wife
 1 BL 441.2 forfeits her alimony as she does her dowry, but
 it does not appear that she forfeits her alimony
 in Engl. for any other cause

Salk 123 Issue born after a putative divorce is presumed to be
 47 R 356. illegitimate. but the presumption may be rebutted.
 Esp. & Big 464. The issue of Hus: & wife after partial divorce then are
 7 Co 421 legitimate. The relation of husb: & wife still
 1 BL 407 continues.

Strag 8. But in case of a voluntary separation by agreement.
 Salk 123. Issue born after the separation is presumed to be
 Esp. & Big 464. legitimate

In Engl.: By stat. ^{total} divorces are to be granted by the
 Sup. Ct. & the causes of divorce are three. 1. fraudulent
contract ⁱⁿ marriage. 2. Adultery. 3. 3 years wilful
absence — Upon the 3^d head it was decided
 that if the husb. by violent abuse renders it impossible
 for her to live with him & she leaves him
 she may have a divorce. after having left
 him 3 years.

Jennings
 &
 Jennings
 1810.
 Janif. 67

In case of 7 yrs. absence unheard of the other party
 may be declared single & may marry again.
 Coet 55. similar to Janif. 1. and by 1st & 2^d the
 4 BL 164. same presumption arises in case of leaves for living —

Divorces

It is again provided that when a person is absent Husband or a voyage 3 years usually he forfeits in 3 months a ^{year} Wife if a Wife if any in circumstances which are his death probable the wife or many monies or other party single & that party may marry again,

Not one legislation may grant either partial or total divorces for fault to

In France a total divorce does not affect the legitimacy of the issue before born.

In Engl when a total divorce is granted the wife has neither dower nor alimony for in Engl when 56 & 98. a total divorce is granted they are severed hus & wife 1 Roll 681.
 Nullum matrimonium nulla dos. 24. 30.
 1337

In France in case of total divorce the wife is entitled to dower unless she was the faulty party. She has alimony too during her life -

(168.)

At present divorce never bars the wife of divorce except
Rostell 327 in Engl: in case of adultery and seduction.

9 Dec 14.

Bro Kait 163.

In Com: whenever there is a marriage within the
Levitical degree, the sup: b: may allow the woman
an annuity — tho' the st disclaim the marriage abso-
lutely void 70

(174)

(1762)

Parent & Child (191)

An infant or minor is any person under the age of 21 yrs. male or female.

Litt 314

257

1 BL 403

By 6th the full age is completed on the day preceding the 21st anniversary of the day of one's birth.

625.

20th Dec 1774.

650.

Ray. 84.

Privileges & disabilities of infants.

As to crimes. No person under the age of 7 years is punishable for any crime whatever - He is presumed to want discretion & will & this presumption cannot be rebutted. At the age of 14 an infant is punishable even capital. Between the ages of 7 & 14 an infant is punishable or not as he is found to be dolé capable. But during that period the onus lies upon the pro.

4th 20. 6.

494

There are some cases in which infants above 14 are privileged with regards to misdemeanours & offences not capital. These offences however are only of omission. & in general infants are not liable for offences of omission. For an infant is supposed to want prudence & foresight and besides he has not the means of performing what he ought to do as he has neither time nor property at his disposal - But when an infant is prosecuted it is a rule that he is not to be convicted on confession without great caution and with perseverance on his part in the confession - (particularly in high offences)

Parent &
Child

Co Litt 247

357.

1 Hank 1.

1 Hale 262

Bro J 274

et. genl stat inflicting corporal punishment sometimes extends to infants, & sometimes not unless infants are so proply named. the distinction is if a st creates such an offence as is punishable at C. by corporal infliction infants tho' not named are punishable.

If a st prohibits an act under penalty of corporal punishment but with constituting it such an offence as is corporally punished at C. infants, unless named are not punishable - this is sometimes called collateral punishment. But when the offence was punishable by C. but not corporally infants are liable to the C. punishment.

Torts.

1 Fort 51.

1 Hank 3.

2 Keil 547

For torts committed with force infants are guilty at any age liable civiliter tho' not criminaliter. for torts committed with force upon the mere question of guilty or not guilty the concurrence of the will has nothing to do with the case. This may be an important inquiry on the question of damages.

1 Joy 129

3 Bar 132

At what age is an infant liable in slander? It has been determined that at 17 he is liable - 29 thinks that when doli capax he is liable. - land requires the concurrence of the will - It necessarily includes malice when doli capax then she is capable of committing what in law amounts to slander.

Infant's liability for torts

(179)

An infant is liable to be punished as a common
cheat not under 14. for under 14 the question of
doli capax does not occur except in cases of felony.

Parent &
Child
12ver169
15id 255
15id 129.

It is so that an infant is not liable to a civil
action for fraud. but this rule requires qualifi-
cation. In 12ver 914 it is so that he is liable
only for torts with some kind of force, but the case
of slander is directly against this dictum — and so
Kensf. & Kenyon were directly opposite to the dictum in
Reber.

3 Bae 132
12ver 775 905
113. 14
15ver 71.
3 Bae 1502
12ver 223

I think the true rule to be this viz an infant is
liable to an action for fraud & deceit civiliter
if doli capax. unless subjecting him for the fraud
would virtually subject him on a contract not
binding upon him — This rule is inferable from
the following cases —

It failed a horse to B an inf. & he brought an action
against B for converting the horse. as for a tort it
was held that the action was not lie — for this
violence was merely a breach of the contract of
bailment.

12ver 335
12ver 169.
15id 129.
12ver 905.
913.

But where this objection does not lie he must
be subjected after the age of 14. —

6 Grant 226
1 Ex R 172
1 New R 140.
1 Ch PL 68.

As to fraud it was said that if a person could represent himself
to be of age when not, that he — and not the law —
is answerable for his misrepresentation. but not the rule now.

(110) Infant's liability on his contracts.

Dr. Child

There are cases in all the branches where performance
2 Eq. 200. of a contract by an infant to pay at present to
17 Feb 47. 111. such coming within this rule the Chancellor acts in quasi judicial
11 Mod 23. to the infant & will not implead the rest of the contract
1 Br 1 353. 8 But this cannot be done now in Eq. where the contract
3 Bac 140. is absolutely void. for this is to be making a new contract
12 Mod 71. for the parties —
1 HBC 75. But further than this, no precise rule can be
laid down

Contracts.

12 L 465.

No infant can bind himself by a contract present
and then contracts are either in quasi void or voidable

Song 500.

And if an infant & adult join in a contract by which
1 Kel 190 the infant is not bound the contract is quasi void binds the
1 Root 58. adult.

A single bill given by an infant is in quasi void voidable

1 Lp 275

Suppose an infant & adult join in a bill the infant
5 L 47 defeats his part by a plea of infancy — and the Pt in the
16 L 32. same suit recovers agt the adult or must be withdrawn
and bring a suit agt the adult separately — (thereafter)

4 Taunt 465

he must bring another suit according to the authorities

(Ch B 453)

but if H. thinks this is a departure from principle —

5 John 160

he says the rule is left from the Eng^t rule.

(Ch B 434)

4 Taunt 468. 3 D 313. Comp C 403. 1 Ch Pl 35 47, 2 Stark 503.

2 L 33.

If an adult contracts with an infant the adult

1 Mod 25.

may be bound tho the infant is not — and in quasi void

3 Mod 245.

is bound in Equity & at Law.

1 Warr 57.

Equity will not however enforce the performance of

2 Stray 37

an agreement agt an adult in favour of an infant unless

1 Parke 24, 110

the infant performs his part.

But this rule does not hold where the engagement is the part of the infant is absolutely void. If the contract of the adult is in consideration of the engagement of the infant. Here the adult therefore is not bound by his contract, 1214.9

- And in case of a contract between an infant & an adult the wife has rec'd. the consideration. 1214.9
he still may avoid the contract & is not bound to restore the consideration. 1215.

The consideration rec'd by the infant is considered at law as a gift made to him & if the rule were otherwise the infant's privilege might be destroyed. 2 Kent 140
Might not a court of equity interpose to prevent the fraud in such case? If the specific property rec'd for consideration can be identified & remains in the hands of the infant. a court of Eq. might perhaps compel the infant to restore it - if he refused to perform his promise. In this case the wife would be placed in statu quo and thus perhaps in one of those cases (ante) in which Chancery will decree an infant to prevent fraud. Can the adult seize the property peacefully? Rever 22
• For necessaries an infant in some cases may bind himself - food apparel lodging medical aid 1214.9
and instruction - the latter includes instruction in a useful trade. 1214.9

But to subject him to a contract of this kind the article purchased must not only be one of the above described but it must be necessary for him at the time of the purchase. the question is for the jury - When a father binds his infant, a gift of "necessaries" is good. 57 R 55.
Cathcart 1214.9. 1215. 1216. 1217. 1218. 1219.

What description of articles are necessary is a question, & law but what articles, coming under the description, which are needed for an in general case is matter of fact for the jury.

Sept 1851. An infant may also bind himself by contract for his wife's necessaries, & for his children--

2 BL 1325. but an wife can't under all circumstances bind himself for necessaries. Ex: when he is under the care of a parent guardian or master who are bound to supply him with necessaries & who do supply him--

Peak R 220

2 ut 35.

Three cases in wht an wife can bind himself for necessaries.

I where he has no parent guardian or master

II where he is out of the reach of P & H & C.

III where being under the care of one of these he is left to suffer. In this last case they are bound as well as himself. at least the parent is. because he is under an absolute oblig to provide for his minor children.

1 BL 446.

And where the wife himself is bound by his contract for necessaries he does not seem to be bound by his express contract but by a contract implied by law for.

For where he is compulsorily bound he is not bound of course to the extent of his promise but merely to the value of the necessaries. - 2 Kent C 240.

Gr E 588.

Satch 169.

20ph 151.

Gr J 560.

Again tho' an infant may sometimes bind himself for necessaries but he cannot do it in every mode in which an adult may make himself liable -

As to his written contracts.

II He cannot bind himself for necessaries by a penal bond -

1 Bou 586. 36.

For the const of a penal bond cannot be inquired into - 1 Bou 586. 36. 17th 179. 1 Bou 729.

III By a single bill he may bind himself for neccy, Gr E 920 a single bill w an acknowledgment of indebtedness - 1 Bou 635

resp under seal. - But here the const is not examinable - formerly it was 1 Kel 382. 416. 417. 12v 86. Ch Bill 20. When a single bill is given by an inf. the const is still examinable - (see in Kel 1178 417ing) 416. 418.

III. By a negotiable note actually negotiated he cannot bind himself for necessaries. 1 Bou 41; 1 Bou 673.

IV. By a note not negotiable & it seems not negotiated he is bound for necessaries. In both these cases as the action is brought in the paper the const may be examined - In case 3^d - as to when the maker & the indorser the const is not examinable. 1 Bou 413. 20.

Xy B 155. 1 Bou 634. 1 Wood 403 1 Kel 445. 1 Ch 120. 9. 58

V By a bill of exchange not negotiated he is bound when given for necessaries. here const may be examined 1 Bou 73. Ch 20-8.

VI By an acc^t stated he is not bound. even for necessaries. But now the items of an acc^t stated are examinable not so when the acc^t was from a Gro J 602. 1 Bou 636. 1 Bou 73. 1 Kel 445.

The true principle is when the will is not intended
 of such a nature as to allow the consideration
 to be examined the test may be found by it & it is
 when given for recipients now if the writing is of
 such a nature as to exclude an inquiry into the
 consideration

By a penal bond then he is not bound. He is
 liable on the original simple contract or can
 the oblique sue on the simple contract. if the
 bond is absolutely void he may. If the bond is
 only voidable he cannot. For a voidable bond
 releases the simple contract. the supposition the bond
 given for recipients

17th Feb 1864. When an infant gives a simple bill for recipients the bill
 cannot be set aside to the original simple contract for that
 18th Feb 1865. bond voidable releases the simple contract.

(18) If an infant gives a simple bill for recipients and afterwards
 and afterwards promises to pay, the bill the action must
 be brought on the bill.

18th Feb 1864. For an infant the bill is not binding, unless he exports it
 18th Feb 1865. in the presence of an officer, & then only, in equity, at
 18th Feb 1866. law the contract must be binding or not absolutely
 18th Feb 1867.

But in leg. an int^r may be compelled to repay money lent
he himself actually repaid it in necessities. ~~see~~

1 D M m 583

538.

2 G. ca 516

1 Port 637.

An int^r who is a tradesman is not bound by contract to pay
for articles to maintain his trade -

Lent 174

1 Port 638.

Lent 1083

Lent 1083

He is not bound by a contract to pay for repairing his
buildings - vide Comyns Bon 149. 3 Bar 1717. 2 Bul 69.

3 Sent 176

1 Port 638.

But if an int^r takes a house by a lease & lives in it
until the rent day he is liable in debt for the rent.
and the rule is 1^o to be the same in case of a lease
of land. (contrary to the genl principle)

3 Bul 69

- 100 9520.

1 Port 635.

It is held that an int^r cannot bind himself by his
contract to pay for education in singing & dancing.

100 446

1 Port 636

When an wife does voluntarily what he w^d be compelled in any lot of justice to do he is bound by

3 Bur 1101. the act unless to his injury. Hence he ^{may} make
60 Att 176 reasonable partition when he lent a tent in com.

315 (c) 2 Kent C 242

9 Cas 88

1 Bl K 575

1 Famb 77

2 Bur 1744 Again if a lease rendering rent resolves upon him, ^d
4 Br 15. he pays rent he can't recover it back — if wife
spends widows her dowry — If an wife mortgages
releases his mortgage on part of the mortgage debt & he is
bound unless some fraud on him &c)

he bound the guardian may in such case make the
necessaries. So Ex & a Ad of the sec: mortgage.

2 Vern 344. An wife &c is bound by a decree in Chy except
419. that he is allowed 6 mo: after full age to impeach
1 Vern 295. the decree for fraud &c.

9 Mod 120

2 P. M. 401

3 St. 382

1 Att 531

3 Att 616

1 Famb 756

3 Att 616 An wife Pff is as much bound by a decree in Chy
1 Famb 75. as an adult — no day allowed to show cause unless
gross neglect a fraud in his proceeding any —
If the bill fails however the wife is not liable for
costs but the next friend. but the next friend will
be allowed his costs out of the infant's property unless
fraud &c.

Acts of a gift taking effect from an authority will
he has a right to security is binding. Thus the
acts of an inf. act. ~~is~~ is binding.

3 Dec 182
Of 14. 215.
217. 8.
Lower Dig
11th 2
Letter 586. 7

A promise after a full age will bind the gift by 2DR 766.
a contract made during infancy unless the donor is a
contract was absolutely void -

10 R 648.
15th 131. 2.
Lodg 291.
21st 205.
Spring 163.

And tho' we sh^d have given while an infant in written Es Dig 164
security yet if the security was absolutely void a full age
promise after full age will bind him. Bullen 155.

If the written security was only voidable the gift
promise to say it will not be good as a substantive
promise a itself support an action but it will Act 58.
confirm the security.

But when a person after full age makes a new gift
promise in consideration of a contract made before full age
during infancy he is bound only to the extent of
the promise.

Es Dig 164
Bullen 155.

13 R CHS. Where to a plea of infancy the Def replies a promise
 Exp' Dig 1844 after full age the proof of a promise after the
 3 Bac 132 (n) contract is suffice & it belongs to the Def't to prove
 that he was not of full age at the time of the
 second promise.

2 Es R 455 (n) If an inf' sued on a contract for a given sum pays
 15 Es R 155 into 6th half the sum to this payt. does not preclude
 him from availing himself of his infancy as to
 the rest.

'Bos 9408 When an infant is sued and answers in any manner of
 action whatever he may not be discharged on motion
 but is left to plead his infancy.

Simultaneous rules.

The age for choosing a guardian by Ct is 14 in males & 12 in females in Conn! it is 14 & 12.

An inf. may be an Exr at any age even in some states 5029
 as more. But at Ct he cannot act until 7. under 97/Exr 307
 that age an adm? durante minority must be
 appointed. Nov 258
 Cuth 416:7
 Clark 74
 Exr 303

But by St 33 Conn an inf. is debarred to act as Exr. till Ex 31.
 until the age of 21. About the year 1798. 160:1. 355.

An inf. cannot be an adm until he is 21. For by the 2nd of 1798.
 Droghda laws every Exr. is required to give bonds for the
 faithful discharge of his trust. This we thought 345.
 an inf. cannot be an adm until he is 21. Cuth 416:7
 In Conn. no infant can act as Exr.

In Eng by Ct a female may be appointed at 7. At an 536.
 inf. of 9 marries on husband's death she is entitled to 236 131.
 dower. 116 160. 240.

The age of disposing of personal property by will is 18.
 in Eng? 14 & 12. if proved to be sufficient discretion. 240 316
 Exrs take the mas. According to other the 180 316.
 is 15. 17 & 18. the former appears to be the 180 463.
 true rule. viz males at 14 females at 12. 240 497.

In this state the age for making a will of personal property is 17 in males, & females.

What contracts made by infants are void? & what voidable —

3 Mar 1805 The English do require to consider them infants of an infant will do not bind him as rather voidable than void.

1 Phil 308 These contracts it is 18 of an infant will do not bind him
54. it is void then to an apparent benefit & a voidable
2 Feb 771 but there is void then is no apparent benefit to him
Cro 678 are strictly void. This rule is a vague rule but
2 H Bl 511 the first branch appears consistent with the true rule
3 Lac 138, 139.

10 Brit 218. The purchases of an infant are in good only voidable.
Cro 7120. nothing of any kind
2 Hall 208.

3 Bun 118 A power of atty given by an infant to accept seizin for himself
1 Roll 736 is only voidable.
3 Bro 112
Other powers given by an infant are in good void.

2 H Bl 511. An indenture by an infant slave to serve his master
is in good only voidable.

It is said that a lease by an inf^t not reserving § Bac 137. § 4.
 rent is strictly void — same if no more trifles is reserved 2 Leon 216.
 as rent.

Noy 180.

Hutton 102

10 Moot 4

436. 333.

12 Moot 162.

3 Ben 406

This rule however does not appear to be correct. for
 It is of every consequence for an infant to make a lease
 a lease without redemptions, and barely to buy his
 title.

6 Litt 401.5

308(a)

5 Bac 535. v. 404. 2 Moot 304. 1 Rev.

II An inf^t's lease can in no case avoid the lease on the
 ground of the infancy of the lessee. 40. §. 308. a. 1506 1 Bond 4.

1 B & C 578.

1 Moot 25.

1 Ben 635. 2 B & R 161.

III It is a settled rule that an inf^t cannot plead non est
 factum to his lease but this is not decisive yet it
 is a ground of argument.

5 Co 119.

A Bill of exchange given by an inf^t seems to be only
 voidable in the infant's hands may recover
 of any prior party.

145 R 107

145 R 102

145 R 102

Same rule applies to negotiable notes.

It is said that a negotiable note of an infant is void but
 the law is that an infant cannot sue on a negotiable note
 by a negotiable note. But while the note is in the hands of the
 infant, it is void. But when it is in the hands of a third party
 into whose hands it is negotiable, then the infant is not
 liable to the full value of the note if it is not.

It is ¹ that the penal bond of an infant
 1 Roll 79 is strictly void — for it is ² that the penalty
 brot 920 cannot be to his advantage

1 Pau 654

Hutton 106. Esp^d Dis 164. 2 Kent C

2 Ban 1404. This pt does not appear ever to have been judicially
 1 Port 512. 154 decided — many opinions inconsistent with the
 Litt 5259

1 Wood 403

6, Litt 172

1 Bull 174 test he cannot plead in set factious to his penal
 5 Co 114 bond & Rae 33). 125 310

Litt 162

2 Ray 315 100 in 200 47. 2 H BL 515.

1 Cy 282. 2^d If an inf^t having given a penal bond bequeaths

1 Wood 403. property for the pay^t of his debts a b^e of ex^{tr} along

1 Feb 74. order pay^t of his bonds. If the bond were

1 Pau 653. void that b^e could not then take notice of it,

Parent & Child 1802

What contracts of an inf do not bind him
are void & what voidable? (Continued)

The true rule of distinction appears to be this. Parks 1219
All gifts grants sales deeds or obligations made 3 Burr 1104.5.
by infants and which take effect by delivery are void 1 Roll 259
only voidable. but all those which do not 1 Roll 730.
take effect by delivery are void. 3 Mac 136.

139
Latet 10
3 Bac 535.
It voids

In this rule the purchases of an infant are
not contemplated these are in genl only voidable
ante).

This rule is also to be taken with an qualificati 3 Mac 136.5
tion. If from the nature of the contract it any 1 BC 1599
giving ^{an interest} that the privilege of the infant would not be 3 Bac 139
protected if the contract sh^d be considered voidable it
is to be held void even tho' it take effect by
delivery— (Case of the baron) 5 Kel 569

But payment made by an inf is only voidable if 3 Burr 1104.5.
it takes effect by delivery. Parks 259

3 Mac 136.5 4 Mac 25. 17 Feb 74. 3 Co 42. 3 Bac 136.

sale of a chattel if delivered on the same
principle is only voidable. [But an agreement to Parks 1219
sell and deliver a chattel with delivery is merely 40677
void] and if the purchaser should take the Latet 10
property ag^t the consent of the infant he is 2 Kel 77
a trespasser. 3 Mac 136

But the rule is not confined to cases in which
the property are delivered—

Those writings which merely create a right by delivery take effect by delivery within the meaning of the rule —

Sh. Touch 60

3 Ban 1804. But those writings which merely create a power do not take effect by delivery. The first

1804. are only voidable the latter are void. Thus

8 Co 42 (b) this is true except in case of power of atty

3 Ban 1804 to accept & seize for him the infant.

1808.

Nov 130.

1 BL R 777:8 1 HBL 75. 1 Bac 136. 138 (a) 142. 142-142

de wift. dees of grant. leases. releases &c by deed are then only voidable for they take effect by delivery.

Sh. Touch 60 If an inf. delivers a deed of conveyance to

Park 8154. and after full age delivers it again the second

5 Co 14. delivery is utterly void as a delivery for the

4 Br 29. first delivery is good until avoided. 2

Rolls abt

Fact. 21

1 Br 32:3

If an infant then makes a feoffment and the feoffee enters the infant can defeat the feoffee by entry & action but if he had delivered a power of atty to S to make a feoffment the feoffee might be treated as a trespasser. See good for the same in Roll's

Accessory contracts by an infu are quilly but voidable. Thus a promisory note, a single bill, & his parole agreements. — Lord Kenon was held that the promise of an infu was void 3 Espo 276. 5 Esp 447. This was a nisi prius decision — (contra 5 John 160) vide 4 Esp 447, 1 Vent 58. Kyd on Bills 112 — But Marshall & Park are decisive. Kel 1. that the note of an infu is but voidable for it is there held that the note of an infu is suff. cons. 937. education to support a policy of insurance. Park Ins H 32. Marsh 675:6.

An infu bound to submit to arbitration is held only voidable

5 Bas 976
Noy 93
1 Ser 17
1 Roll 730

When a contract is only voidable the party for whom benefit it is made so & his representatives can object to its validity but when a contract is void then persons and even the adverse party may take advantage of its invalidity. Ex gr. a voidable mortgage cannot be objected to a creditor by subsequent mortgagee. 2 Hen 184. Again when a contract is only voidable it is a consideration for a contract on the other side. if void it is no consideration. Ex gr. note in consideration of a policy of insurance. 2 Hen 184. 1806. 2 Tra 933. 2 H R 511. 1 For 674. 6 Litt 557.

Again a voidable contract may be affirmed
 2 Buls 69 by him for whose benefit it is made so. But
 1 Frob 131.2 a void contract a void act can never be
 60 Litt 361 satisfied. Ex an inf's power of atty for conveying
 60 f 320 his land the power of atty and the conveyance
 2 Vent 203 cannot be affirmed. 22 R 766. See 60 b. Dong 53.
 Comp 201. 452. 7 R 53. 1 Dent Car 35. More. Alm. Inf's
 and reg. d. y. 1 Bul 207. 124 12 132

2 Buls 69 Voidable contracts may be affirmed except a
 1 Frob 131.2 tacitly. Ex an inf's continuance in possession of a lease
 60 Litt 361 made to him during infancy he is liable for rent
 2 Vent 203. accrued during infancy for it is ratified at
 60 f 320. 124 12 132. 1 Bul 207. 124 12 132

22 R 161 If an inf's makes a lease & after full age accepts
 124 12 132. rents he ratifies the lease
 60 Litt 355.

360 b. And whenever one having made a voidable contract
 60 Litt 295. during infancy after full age does any act evincing
 171. an intention to waive his privilege the contract
 2 Vent 203. is confirmed
 60 f 320.
 124 12 132.

If an inf's comes by fine and some assent he
 60 Litt 355. may avoid it during his infancy by writ of
 124 12 132. error but not after full age
 1 Pa 621.3
 3 Mod 229.
 124 12 132.
 124.

But where he makes a conveyance by matter not
of record it is held that he may avoid it either before full age or after - 112 192
60 Litt 247 (B)

284(a) 380.

This opinion is incorrect, it cannot be avoided until full age - this rule extends to all his deeds 148.
of conveyance - for during minority he can do 112 579.
no act so voidable than the conveyance itself. 23 R 101.

quodammodo

Hence a stranger cannot avail himself of the voidability of the prior conveyance. Thus if an infant conveys A and then conveys B. B cannot oust A - same if infant makes a lease for years.
30 R 161.
3 Bac 137.8.
60 Litt 380.
3 Bac 140.

But it seems that sales of personal property by an infant may be avoided at any time in his minority - for real estate is permanent and there is no danger that it will be injured but chattel is personal and perishable + may be carried away concealed &c + if he was obliged to wait till full age the principles of the infant would be useless.

Certain exempt cases in Chancery.

The rules on this subject are founded on the discretionary control of Chancery over infants.

See also Powers in Chy.

1 Dalt 611. II Marriage settlement agree^d made by wife
3 Atk 56. with consent of parents & guardians are in general
1 Bro 6152 binding in Equity.

3 Atk 612 This a female wife many portion has been
Barra 117 held bound by such an agreement.

1 Bro 611.

4 Cr 196.

2 Vern 501.

1 Pult 441:6

1 P M 574.

Again a female wife may bar herself & donee by
2 Eq. ca 100:2 accepting a settlement by way of jointure & also
1 P M bind herself by accepting of personal property as
1 Pult 53. a jointure - (not at Law) Vice Receivers, Som. Ruler
1 W 55. 305.6

5 Bro 6570.

Whether a male wife can bind himself and his
1 For 666:70 real estate by marriage settlement is yet unsettled
4 Cr 19. but by real estate must be meant a real
1 Pult 662 estate of inheritance. not an estate for life or
tra 604 lives. for it is settled that he may by such
2 P M 229. agreement bind an estate for lives.

2 Ch. Ser. 211.

1 P M 143 If a female wife seized in fee with consent to &
1 Pen 548 in consideration of a competent settlement covenant
to convey it to her husband a bill of Equity will convey
according to the covenant — so Hardwicke says
3 Atk 613.5 that this can be done where she survives —

1 Pen 650 4 Cr 16 —

Ed Shumlow denies both these opinions he says
she is not bound unless she survives the hus.
and ratifying it -

1 Bro & L 116.
4 El 510.

3 Wood & S 64

4 Br 7. 15.

The first rule then by Ed Shumlessfield is not
law -

But a male & female wife may certainly
make a marriage agreement with wife binds an
estate for life why not then an estate of
inheritance.

The law of Equity may
consider it very reasonable that real estate should
be bound for the life of the survivor. this may
be necessary to provide for the family - but a
fee simple is not necessary for any purpose
connected with the marriage.

Any contract by a female infant after the
marriage is not obligatory.

3 Arch 56.

1 Bond 70.

3 Br 2654

Again if a male wife in marriage with an
adult consented that her inheritance should be
settled to certain uses he is bound by it in
law way he may trust himself of the country.
She is here supposed to be an adult. for otherwise
she could not bind her inheritance -

2 Bro & L 115.

1 Bond 70

4 Cr 14.

Here the wife has not bound his own inher-
itance but in effect it merely buys his right of
country -

Or Childs

But no agreement made by an inf^r or marriage
to settle his or her estate will be enforced in
2 Pmm 244. Equity unless it is fair and reasonable and an
1 Pm 675. adequate consideration be. This is to be taken
1 Bro Ch 115.6. as a qualification to all the preceding rules.
152.

5. 2th 615. 1 Forb. 69. 70.

16. 2d 282 If an inf^r capable of making a will bequeaths
1 Forb 74. personal prop^y for the pay^t of debt his ex^r is
1 Morley 403. bound to pay his voidable contract - but not
1 Pm 637. his void contract. This is peculiar to Equity.

1. 2th 489 And in Equity, a contract made by another
3 Bac 140. person for an infant may be ratified by the
inf^r either expressly or impliedly after he obtains
full age. - Thus where a widow the
mother of several children leased estate belonging
to children for 40 years the children on full
age accepted rent and this was held to be
a ratification - 1 Pm 615.

What powers may be executed by an infant?

An inf. can't execute a genl power over real estate for want of supposed discretion - form Verge court may. 4 gra. 1st Verge real estate 304
 is a 1st infant to convey it to such persons as 3 at the eqs.
 he shall think proper. a to trusts to convey Verge Pow 43:8
 to such persons as a 1st inf shall appoint.

But he may execute a special naked power. cc 3 at the 710:144
 a special power over another's property a special cc 3 at the 52
 power is one which points out what property and Verge Pow 43:8
 to whom it is to be conveyed &c. -

But the power must be a naked power he Ver 306
 can't execute a power over his own inheritance Ver Pow 43
 Thus 1st Verge his estate to an inf with power
 to convey to whom he pleases during infancy
 the latter part of the devise is utterly void. -

And Verge 306 has said that a power over real estate 3 at the 710
 can't be executed by an infant but is inoperative. Ver 304
 meant here a discretionary power. Ver Pow 43:7

An infant then may execute a power so as to Ver 304
 bind his principle to the extent of it. if it is not Ver Pow 43
 his the infant's property & if it be not discretionary.
 this rule as indeed all on this page contemplate
real property.

An inf. may execute a paper over personal
 No 303. property at any age in will be in my disposal
 Pow. Court at 6 will be in my disposal of all my
 property

Common. An inf. may execute an office whh requires merely
 Off. 631. skill & diligence - but not a judicial office a
 Bro E 637. any whh requires judgment & discretion - He
 Cozett 34 may be a jailor or a bailiff. The reason is s.
 11 Co 44 to be that if they cannot themselves execute such
 Bro Bar 279 ministerial office he can execute it by Deputy
 556. 4 Co 179. 2 Role 153. 3 Reason 123. 5. 7 25. 36. 36.

It is doubtful whether an inf. at 62 can
 hold any office whh cannot be executed by Deputy
 I should think it inferable from the English
 authorities that he cannot Bro 636. 7.

By the law of Penn: I think that no infant
 can hold any civil office.

3 Bac 146. An inf. cannot be an atty. for by law he cannot
 take an oath of office.

He 325. He cannot be a juror - same reason & besides his
 3 Bac 126. duty is judicial

5 Co 27. And an inf. officer is regularly bound by
 8 Co 446. his official acts & liable for neglect of duty
 2 Howd 34. And if his infant superior suffers any wrong
 3 Mod 111. he is liable as an adult male.

There are some conditions annexed to office, & estate, by which an wife is bound, and by some he is not. By express conditions an wife is bound as well as an infant is one of the estate of a mortgagee descends to an wife heir of the mortgage is forfeited the wife is looses the estate. If however there is a penalty distinct from the forfeiture of the estate annexed to it the wife is not bound by the penalty - The penalty is here called collateral.

He here forfeits the estate but cannot be subjected to the penalty.

His liability to forfeit his estate by non performance of a condition cannot injure him.

Implied conditions at law are founded on skill & confidence, or not so founded. Those by conditions of the former kind infants are bound - An officer requiring merely skill & diligence, how by unskilful management he may forfeit such office. Rule the same as applies to estates to grant an estate to a wife on condition that she shall perform faithfully the duties of housewife on the estate -

But where an implied condition is not founded on skill & confidence he is not bound by it.
 60 HLC. Eg. gra. An inf. lease for life aliened in fee
 60 Lile 233. he incurs no forfeiture for the condition is
 1 Kell 557. not one founded on skill & confidence.

Conditions implied by statute law. In those vide
 60 Lile 54a & 60 HLC.

It is the great distinction is where a stat. by an
 2 Kell 557 implies condition gives a recovery right he can't
 1 Fomb 223 the inf. is bound by it.

But where the stat. merely gives a right of entry
 on nonperformance of a condition but does not
 expressly give any right of action or recovery the
 inf. is not bound. Ex. alienation in mortmain.
 1 Kell 557.

1 Ger 31. Infants are bound by stat. of limitations unless
 1 Eg. ca 304. specially excepted in a saving clause or proviso
 22 Cincin these sts are in nature of a condition annexed
 518. to a 6d right. Almost every st has
 such proviso.

3 D Mm 509 Thus under sts of limitations wh. do save the
 rights of inf. if an Ex. adm^r or trustee for any person
 inf. does not sue within the limited ^{time} he is barred
 the saving notwithstanding — but this rule
 must be confined to cases in wh. Ex. or he have
 a right to sue in their own name.

Ex gra a man dies leaving a prom note to
a an inf. here the Ex^r of the testator has a
right to sue & if he does not sue the inf.
is barred but he has his remedy agt the Ex^r

Means by whh infants may appt his
privileges — how is he to sue? on the same Bro J 640.
He must always sue by his guardian or next 3 Bac 148.
friend. the action is in the name of the Kil 409.
inf by his guardian — & he must appear by 420.
guardian — he cann't appear by atty. for he
cann't make a power of atty. he cann't
appear in propria persona for he is incapable
of managing his cause.

If an inf then dies with guardian to the Deft 3 BL 301
may defeat the suit by pleading to his disability. Co Litt 137d
but 123
2 Saund 212d

It is in virtue of St law that an inf can sue by
next friend. at Ed he must appear by guardian Co J 640.
But by St Westminster 142^d he may in certain cases 3 Bac 149
sue by next friend. — These are all cases of necessity. Sta 709
2 Bac 680.
For guard —
Pinn 295.

(206).

Under these 2^{ds} there are 4 cases in which an
int^r may sue by next friend.

Cr. J. 640
Hutt 92.

I Where he sues his guardian.

Cr. J. 640
Litt 369

II Where the int^r is not a stranger but the
guardian refuses to appear for him

Palm 295.

Co. Litt 135

III Where he has no guardian.

Cr. J. 640

IV. Where he is out of the reach of guardian—

3 Bac 149

2 Do 680.

Palm 296.

In all other cases he must sue by guardian
According to some in all cases he may
sue either by guardian or next friend as he
chooses.

3 Bac 149.

Hutt 92

Cr. J. 640

Co. Litt 135

3 Bac 149.

2 Do 213

If husband and wife sue together the wife being an
int^r she need not appear by guardian for he may
appoint an atty for both.

2 Eg. 142

the 506.

1026.

15 R. 491.

11 Hy 130.

1 Mc. Cul 60

Where an int^r sues by guardian the guardian & not
the int^r is liable for costs & the guardian is compellible
to give security for costs same when he sues by
next friend viz the same—

1 Phillips 5046.

2 PM. 149.

Litt 307

Stray 203.

1 Balot 109

Wiffard 26.

Wilson 130.

16 Co. 61. 2 Eg. 138.

And guardian & are in either of these cases liable
to an attachment for non pay of costs— This is
not known in our practice. In Comm' Ex. & spec for
costs agt. either party.
& One description that I oftⁿ hear the next friend may
sue either guardian or int^r afterwards damns

If these costs are awarded up in life the budget is enormous.

But an inf is def is clearly liable in costs.

Extra 127
Barns 105
128.

Stra 1217
 Dyer 104.
 Bulls 189.
 Hallock's law
 of costs 226.

Esquimaux says in his deget song that a young man Esp. Di 1644
of an wife on record when left, is liable for early

⑤

Thus we were being a little more strict for an
inf. even on the account of the latter but the very one
may commence the suit yet the C. may dismiss him
as an improper person to represent the inst.

2 Buc 680
3 Buc 44j
1 Ec 172
1 Buc 64
Xib 411

If an inf & an adult are p^{ts} in an action as Ex^o Co^o 278
both may appear by atty for both being representatives 541
if other the inf's rights cannot be affected the adult & same 278
may make an atty for both
1 North 102
Stu 234

1 Vent 102
Stra 784
3 Mod 236

That if an infant and adult are sued as Ex^r the
 plea of the infant must be signed by the guardian
 of the infant. & the infant must appear by guardian
 for here judge may be given de bonis propriis & in genl
 Stra 748. calls and awarded ag^t Ex^rs when depts there are the
 Toller 472 infants interest is here concerned.
 Selw 130. ~~contra~~ Brof. Cro E 542 in this case it is said
 that if an infant sues alone as sole executor he
 3 Bac 150 may appear by himself or by atty appointed by
 Brof H. 441. himself sed contra — The true rule however
 Barth 123 appears to be that he must sue by guardian.
 2 Saund 213 (p1) 1 Vent 102:3. The interest of the person whom
 he represents may be materially affected tho'
 his own interests may not be

(209)

Parent & Child (103.)

How an inf is to be sued?

He must always be sued by guardian. He can be sued by next friend. - For the sts of West allow next friend the infant to appear by next friend do not extend to infant Defendants. Co Litt 141
406
3 Bac 140

And whenever an infant does plead his plea must be signed by his guardian or plead by his guardian, and so.

But by the guardian in this rule is meant not Co Litt 135 but as this case may be the guardian of the infant Fitzy person or estate but it may be one appointed by the Court of Chancery by letters patent to manage the infant's suits or one appointed by the C in which the suit is pending pro a nata. - By our practice in - if the infant has a gent guardian he must plead by this gent guardian. - Where an inf female covert is sued she must appear next friend by guardian seus mariti a female covert & her hus. 2 Keb 878
1 Vesey 91
160
1 Warr 185
2 Rev 38 - 3 Bac 150

If an inf having no gent guardian for his suits is sued the C in which the suit is pro a nata must appoint a guardian pro a nata called a guardian Co Litt 89 ad litem. - Even C where an inf can be sued has the power to appoint such a guardian. - Ex post facto 24 Rev 16
3 BC 427

But where an inf has a gent guardian to appear in his suits the C cannot appoint a guardian unless such gent guardian is out of reach of process or has misdeemeaned himself. 3 Bac 150 (n)

(210.)

Gaudian
Ward

In one law the gaudian appointed for the
wto person a property is the person who is to
appear in his suit.

If an writ having a good gaudian is seen the
gaudian must be summoned to appear & defend.
and if the writ does not originally summon the
deft gaudian the writ does not abate. but leave
is given to summon the gaudian by testament
prop. This is always the practice in Court.

It is always important to the Plf that the
gaudian be summoned or one appointed for.

Brof 640.

Halt 92.

2 Bac 218.

Velv 58.

If an writ is sued & judge goes agt him when
he appears by att the judge is erroneous and a
writ of error revis lies to reverse it.

Bro E 4. 424 If an writ rel appears by att and judge is undone
but 113. either agt or for him the judge is at all erroneous.

1 Roll 287

If judge is given for the writ in one case it was
2 saund 113 he says that it is not erroneous Brof 441. Bro E 542. but
the not appear to be law.

Brof 580.

2 saund 213

3 Bac 147

150

2

But E is now altered by 21 jucl. By that if in
such case judge is undone for an writ and upon
a verdict given the judge is good. Again by it
& Ann. the judge is good when given for the writ
on confession. nil dicta a non own information.

But notwithstanding these statutes if a sup
sued by att the infancy may be pleaded in abate ment.

211. 123

211. 123

If an inf is sued as co-def with adults both
 appearing by att and entire judgt is given agt them
 the whole judgt is erroneous. Both may join in sup 289
 a writ of err to reverse the judgt. But in this case 367
 case if the damages are severally adjudged the judgt 370
 is good as to the adult & may be reversed quoad 560
 the inf alone on a writ of err brot in his solo 189
name.

208.

4 Bar 2022

The sup 6 in this state once abolished this distinction
 in a case where inf and adults were sued together sup 116.
 as trespass all appearing by att judgt was rendered rev OK
 with entire damages. the 6 reversed the judgt only
 as to the adult infants, and compelled the adults to
 pay the whole damages. but I think this contrary to principle
 Each indeed is liable for the whole trespass in law
 but yet the apportionment of damages might be diff where the adults
 are sued along.
 If an inf and adult join in levying a fine, the
fine may be reversed as to the infant only. here sup 270.
 there is one judgt only but in effect this judgt is 6 115.
 nothing more or less than a common appearance &
 ought to be treated as com: appearance are are

124

211. 108

211. 229

Infant in ventre sa mere.

1 BL 130.

so many persons they are considered as persons in the not to all purposes. They are now considered in the in many instances in which formerly they were not.

4 BL 190.

The killing of an unborn child is not murder.

1 Hank 121.

yet it is a great misdemeanor, the highest degree of misdemeanor.

(M) 348 a. 115.

But if an attempt is made to kill such an infant and it dies within a year and a day from the injury done and the wife is born alive it may be

1 Hale 433.

murder, or it may be manslaughter or excusable homicide according to the intention of the person committing the act.

1 Hale 121.

4 BL 197. 8.

Such an infant is capable of inheriting, till the birth the estate descends to the heir presumptive but on the birth the interest of the presumptive heir is directed in favour of the new born heir.

2 BL 208

1 PM 486 b

5 TR 60.

Hob 3.

1 Co 95 a

99 a

Long 452 b

Such an infant also may take by devise. *Barne* H 29. 32

4 Bar 215. 7. 1 BL R 443. 5 TR 49. 51. 1 Ves 144. 2 W 225.

3 W 526. Formerly otherwise - vide *Devices*.

Such an infant may also be a legatee of personal property. 1 Bro Ch 386. 1 B 4 P 243. 1 BL 130.

Where a devise is made of real estate to such an infant the estate descends to the heir at law liable to be directed on the subsequent birth of the devisee. *D. Ch 9.*

1 PM 486. 2 PM 20. 1 Bro Ch 386. 5 TR 49. 51.

And where such a devise is made to an unborn child of two children to be born there two or take jointly.

Such a child again will take under the stat of
disturbance - 2211ms 446. 2 Atk 117 Barnes. 290.

So when one creates a term to raise portion for such
children as he shall have living to the time
of his death a posthumous child will take an interest
in this term. See in Ch 50. 1811ms 246. 342. 2 Atk 117

And a bill in Chancery for injunction of waste will Com 10. 11
be in behalf of such child. The bill must be retrieved
brought by defendant's next friend. 50.

2 Atk 117

And under 12 Ch 2. will enables a father to appoint
a testamentary guardian for his infant children 180130
a father may appoint a guardian for such a 462:6.
child -

Such an wife may be an Exr

5629

Off Ex 2307

3 Bar 123.

And if a person appoints an unborn child Exr & the
child be born the appointment is void

5 Bar 123

Relative rights and duties of parent & children
but first of illegitimate children?

1 BL 440 Who are legitimate and who not? a legitimate
60 Ltt 244 child is defined to be one born in lawful wedlock a
60 p 541 within a competent time afterwards. but every child
the 40. so born is not of course legitimate but one so born
5 Co 78 (6) is prima facie legitimate & no one except one so
1 BL 457 born can be legitimate.
Expediency 413.

1 BL 454 An illegitimate child is defined to be one begotten
& born out of lawful wedlock. but if the parents
of an unborn illegitimate child die intermarry before
the birth & the father dies before the birth still
the child is legitimate & still not born in
lawful wedlock for the father is supposed to be deceased

An illegitimate child is one begotten out of lawful
wedlock & not born either within lawful wedlock
or within a competent time afterwards.

¶ An illegitimate child is one who was not begotten
by ~~him~~ who was his of the ^{mother} ~~father~~ at the time of the
birth or procreation or during gestation.

60 Ltt 244 The presumption that a child born within lawful
5 Co 90 wedlock & within a competent time afterwards
2 the 40. is legitimate is accordingly ^{strong} formally the presumption
1 Co 176 could be rebutted only by showing the impossibility
Hall 23. of access or impotency.

1 BL 457
Expediency 413

This rule has in modern times been much relaxed

Similarly, the other branch of ^{non} accept by the husband
could be proved only by proving his absence before 2L
the four seas during the whole period of gestation. 2L 112

1 Dec 311
1 B 1457.

If then the husband has been absent for any time
even beyond seas & has returned even so that a
time before the birth the child was considered as
legitimate as far as accept is concerned. 2 K 12715.
Salk 112. 11211

60 Salk 144. a.

As to impotency, vide. —

1 Dec 312.

1 B 145-

But there was requiring proof of 'impotency' of 3 P M 75. 6
Legitimacy we now require, and now the jurisprudence 419
may find non accept the husband has been stranger 25.
within the realm. during gestation. Non accept Sept Reg 414
may now be proved like every other fact &
it is left to the jury under the circumstances of
each case,
and now other evidence besides non accept by 2 Dec 341
impotence is now admitted to prove the illegitimacy 47 K 336.
Ex ora It may be proved that the mother cohabited Sept Reg 414
with another besides her husband that the child was
proved illegitimate and indeed any circumstance
evidence whatever.

It is that the fact of legitimacy is now provable
by the same evidence as is admissible to prove any
other fact —

Child The issue of a marriage which is at once null
 Colett 235 is of course illegitimate. — And in Engl. in
 1 N. 2 H. 36 H. case of total divorce the children are illegitimate
 456. for such divorce is in genl granted only where the
 760 H. marriage is at once null.
 But the legality of a marriage not absolutely void
 1 R. 440. can never be called in question after the death
 of either party. Hence issue born within wedlock
 or within competent time afterwards cannot be
 proved illegitimate by questioning the validity of the
marriage, after the death of either party.

But tho' the marriage cannot be impeached after the
 death of either party, yet a person may be proved to be
actually illegitimate, even after the death of
 both of his parents tho' he was born during the
marriage —

Comp 594. When the question of legitimacy depends upon that of
 accp, the mother is not allowed to testify. this
 rule is founded in decency morality & policy and the
 law presumes that other evidence of this fact may be
 obtained.

Comp 594 And yet she is a competent witness to prove her
 1111. 1112. own incontinency for she may be the only evidence of
 1113. 1114. this fact.

Exp Dig 455.

Comp 594. The father & mother are competent to testify the
 1115. 1116. time of the birth. so as to the fact of their
 1117. 1118. intermarriage

33.

1119.

Vide Tot Evidence

If the civil & common laws, a child born of a
marriage is legitimated by the subsequent intermarriage
of the parents. but not so at law by our
laws.

C. 60, 65.

1 B. C. 454

456

1 B. C. 624

And children born of a widow so long after the
husband's death as that in the ordinary course of
nature it cannot be the child of the husband the
child is illegitimate.

Co. Litt. 123, b. 11

The precise time of operation cannot be bro't
nithin an unqualified rule. 9 labor months 1 B. C. 456.
is the usual period. vide opinions of medic. 1 B. C. 312
see more. Co. Litt. 123, b. 11: 2:

A child born within the usual period of gestation
after the husband's death is prima facie legitimate.

1 B. C. 456.

1 B. C. 312

1 B. C. 356.

Palmer, 9.

A child born after the expiration of that usual
period is presumptively illegitimate if however the birth
is not at too great a distance of time from the
death of the hus? the presumption may be rebutted

Palmer 114

Esp. Dig. 455

Co. Litt. 123

(C) n. 2:3.

If a woman marries immediately after her hus?
death and a child is born at such a period as
that it may be the child of either in the above
of other proof the child may at the age discretion
choose a father from either!! The presumption is
assumed to be balanced.

Co. Litt. 8

1 B. C. 456.

Rose 357

1 B. C. 456.

De Child It is laid down that no person can be proved
 7 Co 44 illegitimate after his own death. "personal defects
 1 Co Litt 35a die with the person" but this rule only applies
 245 to one case & holds only as between a child
 1 Bac 315 born before the intermarriage of his parents &
 a child born after such marriage as between
 1 alk 120. those parties the rule is that the illegitimacy
 3 Co 410. of the one born before marriage cannot be proved
 Esp 121488 after his death. If then the bastard child enters
 7 Co 44 upon his father's estate & dies seized his issue shall
 6 Co Litt 374 hold to the exclusion of the legitimate issue but
 245. 244. to exclude the legitimate children there must have
 1 Ro 624 been an uninterrupted possession by the bastard
 1 Bac 315 child & a descent to his issue. Hence during his
 1 Jonk 208 life the legitimate issue may exist him so if his
 issue is unborn at his death.

Rights of illegitimate children.

1 Co Litt 35. 9. The rights of property are such as he can
 1 Ro 451 acquire for he can inherit nothing. and 2 Co 118
 that he is heir to no one except his own issue this
 is not true in all cases & to all purposes

1 Co Litt 35. 9. The illegitimate child cannot marry within the prohibited
 1 Ro 451 degrees. He cannot marry his sister, aunt &c
 1 Co Litt 168
 1 Co Litt 168 1 Ro 451. 5 Co 165.

The law of England respecting the consequence of bastardy
 1 Ro 451 matters to the marriage of any wife applies to her
 1 Co Litt 168 he must have the consent of his mother
 1 Haggard 337 illegitimate child, but this rule is denied by
 1 Co Litt 168 in 17 Co 11. and in 17 Co 11. 11
 22 Vol 58. 11 Co 11. 1 Ro 451 (p. 11)

The maxim that an illegitimate child is the son of nobody applies chiefly to inheritances and it is so that it applies to this case only —

7R 101
Lett 518.
Cott 123
1 R 452.
1 Bnc 309.

which a child does not inherit in in name but he may acquire it by reputation and having acquired such in name he may purchase by it.

Cott 3
1 R 453.9
2 R 312
355.

"Derives." 6 Co 65. 1 R 410. Pak 526.

- He may purchase by the name of of the son of B after having acquired the reputation of being the son of B. 1 R 410. 6 Co 65. Cott 361
2 R 338.

But he can never take under the description of of the son of B if ipse. For an estate devised to the ipse of B. an illegitimate child of B could in no case take. For ipse means him of the body in law. Neither can he take under the description of heir or heir of the body. But he may take under the name of son of B after he has acquired the reputation of being the son of B. such a person can have no heir except of his own body Cott 361
1 R 453

and he can't inherit a share in settlement from the settlement of his parent. When he is first known to exist or where he is born is his settlement of then a child is settled in the parish where the mother is another the child residing with his mother for matters the parish where the child is settled must have the expense

1 R 417
1 R 302
459
2 R 477

(230)

Pro child

Salut 121

1 Bl 457

But if the child is obtained in any parish by fraud the settlement of the child is in the parish of its mother — ex gr^a where a mother is driven to another parish for the sake of having the child born there.

1 Bl 457 n

Ent^y of parents to such children converts in the obligⁿ to maintain them. This obligⁿ is express in Engl^d & how by stat.

1 Bl 457

The putative father & mother of an illegit^e child are here & in Engl^d chargeable to a certain amt^t for the maintenance of the child — In Engl^d the parish prosec^{ts} a complaint in the name of the king the object of which is to compel the putative father to indemnify the parish not supporting the child.

Reg^l 27

In France the child must have the same mode of prosecuting & for the same purpose, but it is now usual for the mother of the child to prosecute and the magistrate ex officio issues a requisitoire criminel to bring him before a magistrate who acts as a J^{de} d'inquiry & the magistrate on the evidence must either bind him over to take his trial at the Cr^{im} or to discharge him.

In this inquiry & before the Cr^{im} the mother is a compulsory witness & a negotiator, even tho she is the defendant & receives money for the support of the child.

The oath of the mother is not conclusive but Parent
it knows the burden of proof on the party accused Child

The party accused can't testify

It is indispensable under our Stat that she sh^d be put to decision who the father was at the
hour of time the misfeas of this can be supplied
by nothing in case she prosecutes.

But if the town prosecutes this discovery is not
indispensable. 1 Root 107

If the Def^t is found guilty the usual judgment is that
he shall find surety for the pay^t of the damages 5 Th 370
specially and to find surety to save the town harmless lib 268.
Where the town prosecutes the latter judgment only is
given. Where the mother prosecutes both judgments may
be given.

Of late in some counties the Gr have issued Ex^{cs} 1 Com^t 2417
against him as in other civil cases, it is an Ex^{co} at the
end of every three months. The proceeding has
been decided to be legal.

The mother is not required to enter into bond
with surety for the maintenance of the child.
It has been usual to a prop.

5 Kap 517

2 Do 156

Comstock v Med 2 Conn 21

If the child dies before the separation of the four years future expenses are stayed.

If from death &c the expenses of the child exceed the damages on application to the C.J. the damages will be augmented.

The trial cannot be had until the birth of the child tho' the complaint is made usually before the birth.

If the woman dies or marries, a suffers an abatement the accused must be discharged.

If the putative father will voluntarily enter into a bond to indemnify the town, the select men of course will not prosecute.

If the mother commences a prosecution & fails to pursue to judgment the select men may take up the same suit.

52 R 3p If the mother dies after the birth & before the trial her testimony at the C.J. inquiring is evidence on the trial against him. It has been a question whether on a trial the mother can be compelled to testify. It has been determined that on the construction of this statute she is compellible to testify. (formally decided otherwise).

1 Day 278.
32458

Originally the Ct tried these questions + now it is jointly tried by the Ct. - It has been decided + settled that divorces are amenable in trials of this kind for the object of the trial makes it a civil proceeding. But it is regarded so much a criminal proceeding as that no appeal lies from the Ct to the App Ct.

Rights & duties of legitimate children to
the duties of parents to their children consist
chiefly in maintenance, protection & education.
Maintenance consists in providing necessaries. Page 500

The obligatⁿ of parents to support their minor children is absolute except so far as the parent is subjected to their support. 3 Cas 37

This duty in Eng^l is enforced by St 43 Eliz + 1 Eliz + 48.
here by a similar Stat. and the obligⁿ extends
not only to parents but to grand parents that
is if the child has no parents &

But all persons who are poor, indigent & unable to support themselves are to be supported by their parents or grand parents, if on the ability

Parents, to me, not bound then to support their adult children if the children are able by labour or otherwise to support themselves.

Children are under the same obligⁿ to support
 their parents if the parents are unable & the
 children are of suff^{ic} ability. See it extend
 1 BL 4574 the same obligⁿ to grand children, if there
 are no children of ability

The obligⁿ of towns to support paupers is only
 secondary — the town is bound only when there
 are no such relations as are bound to support
 them.

2 Ray 1454 this obligⁿ extend only to those who are related by
 consanguinity a man is not bound to support
 the minor children of his wife by a former husband
 even tho' when the widow married she was able
 to support her children
 1 Ch 296
 Stro 955
 1 Bro 265 2 Ventr 353 & East 70. Blackstone lay down the rule
 diff^{ly}. But BL is not according to authority —
 vide 1 BL 448.

Stro 190 A man is not bound to support his wife's parents.
 2 Bul 345.

How far a parent is bound to support his son & his
 wife appears doubtful. the supporting him appearing
 to involve the support of the wife after a divorce
 a man & the parent is not bound to support
 the wife.

It is not clear whether the obligation of support
 extends to the wife of a son who is not bound to support
 her.

Parent & Child. (104)

The duty of the parent to support his children continues only during the life of the parent. 12449
he may disinherit all his children, & the child has no claim to the estate.

In cases where relief is enforced by application in form of a memorial to the C^o of the C^y where the pauper resides, an action will not lie. This rule contemplates adult children. In case of minor children any proper civil action will lie.

3 B. & C. 37

13 V. 104.

3 Exch. 251.

The memorial may be ^{brothly made by} ~~made~~ by the pauper or by the select men of the town, and on the memorial all the parties represented as under the obligⁿ are bro't before the Court and the maintenance is proportioned according to their existing ability. The order being made the relatives are bound to give security to perform the order of the C^t and if such security is not given quarterly Ex^{rs} will issue ag^t the relatives bound.

The duty of protection is rather allowed than enforced. Thus a parent may uphold a child in law suits without incurring the guilt of maintenance. He may justify a battery in defence of the child, & the children may do the same towards the parents. 1 B. & C. 50:14
1 Hawk 83.
131.
Cro 296.

Education. This duty is not imposed to any great extent. Our stat provides, that parents & masters shall teach them to read the English language well. also teach them the moral law of the state & if not able to do this to teach them some short, orthodox catechism!! The select men are here authorized when parents neglect the education of their children to take them from the parents & put them under proper masters males until the age of 21. females until 18.

Rights & powers of parents.

1 Bl 482

1 Hawk 130

73:4.

Kelling 65.

The parent has a right to correct his minor children in a reasonable manner. but if a parent exceeds the bounds of moderation & appears to have been excited by malice the child by his next friend may have an action ag^t the parent. or the parent may be subjected to a public prosecution.

1 Bl 483

This power of correction may be delegated by a parent to a master. ex gra: parent binds child as an apprentice.

Parents have the right of controlling the marriage contracts of their children. 1 BL 452

But a parent has no power over his infant child's estate otherwise than as guardian. he may be called therefore to account. 1 BL 452-3

And a minor is entitled to all property which he may acquire in any way except by his own labour or services - he is entitled to the avail of his labour as being his master.

Hence a parent is entitled to an action per quod ^{de} apt any one who has beaten or injured a minor child by which loss of service is occasioned. 9 Co 113 1 BL 453 exp Dig 645
If a child is bound out as apprentice the master & not the parent is entitled to this action.

Hence also an action will lie by the parent for enticing away a minor child. 2 Keble 213

For the immediate personal injury which a child may receive he is in his own name entitled to an action. exp Dig 44

And in these actions brought by the parent for consequential damages if the parent has incurred any expense by the injury he may recover for the loss of service & the expense. but in such case he must specially state the expenses. 3 Mod 11 Reg 259

Parent? And on the same principle a parent is
 Childs entitled to an action agt one who has seduced
 18 Ray 1032 his daughter - In this case the per quod
 3 Bar 1179 is the nominal gtl of the action. & the
 2 T R 168 action will not lie unless there has been illegitl
 6 Mod 127 male issue.
 11 East 24
 Exp & Dig 645 2 Selw 1083

3 Mils 18. In this action the parent may recover the
 Ray 259 expenses of the daughters illness but these exps
 must be specially alleged.

3 Mils 19 But the l^op of service, is not the rule nor the
 Exp & Dig 645 principal ground of damages.

Laver 11 178
 11 East 23.

2 Selw 1087

The l^op of service is the gt of the action yet
 2 T R 168 evidence of the slightest possible service is suff
 3 Mils 19 to maintain the action

Peak R 55.

Peak R 55
 253.

And it is held that it is sufft if she ^{was a member}
 of his family - I think correctly. The parent
 had a right to command service.

1 Root 472 The character of the daughter in this action is
 put in issue & it determines the amt of damages
 And in Count the action lay facie entirely on
 Peak R 240 acc^t of the bad character of the daughter tho
 39 slight l^op of service was proved. And in Eng?
 Ball & P 27. where the father contributed to the bad conduct
 of the daughter it was held that the father
 was not entitled to recover at all. volente

But the daughter must be proved to have been
in some way servant of the plff

3 Ben 1784

2 R 168

Lo Ray 1032

Bro 6764.70 6 Mos 127

But the age of the daughter is not material
provided she was servant to the plff at the time of the injury. & even if she continued in the family of the parent as a subordinate member even tho' no contract of service be proved. - And then it is said in at 252
can be the age of the daughter if she was not actually emancipated for arriving at full age only give the right of emancipation. 3 Mils 18.
25 R 166.
2 Delo 1084
East 526.
East 270.

But where the daughter is under age she is of course regarded as servant to her parents, except when she is bound out to another with wages, or with wages, which are received to herself. In this case the master can maintain the action. - It is said that the daughter must be resident in her parents' house at the time of the injury done. But this is by no means true. vide Exp? Dig 1085. 3 Ben 1078. In case of an adult daughter this rule may be true she must either reside at his house or in some way ^{be} servant to the plff.

East 45

2 Ben 1084

Hunt 177

Again Exp? says that the daughter must be a minor but this is minimally true Exp? Dig 1085.
(ante.)

Parent & Child.

2 T.R. 7.

2 A.R. 55.

11 East, 22.

3 Nils. 18.

1 R. 492.

2 R. 167.

Ray (18) 1032.

117

1 Nils. 9. 13.

6 East 388.

3 Nils. 18. 3 Burr 1878. 2 T.R. 4. 2 Selw. 1084. 2 N.R. 476.

Peak 233. 240. 5 D.R. 261. a 126. 1000 (1800) 1000

2 R. 1012

2 T.R. 167. 8.

2 T.R. 292.

1 N.R. 555.

2 Nils. 13.

3 Nils. 20.

2 T.R. 166.

3 B.L. 140.

600. 770.

300. 306.

3 Burr 1174.

1880. a 1000.

This action lies in favour of any person in loco parentis or in loco parentis with whom the female resides & who was in loco parentis

In these actions the daughter herself is always a competent witness. She cannot be compelled to testify. This action when brought in the common law is on principle in form trespass on the case but in Eng^l it is usually trespass vi et armis

If the deft has unlawfully entered the wife's house & this is alleged in the declaration the action ought on principle to be trespass vi et armis & is so in practice

But when the declaration does allege an unlawful entry of the wife's house proof of a license to enter defeats the action. for the subject misconduct is merely in aggravation

It has been a question whether an action will lie for taking away one's child without alleging any loss of service or any special damage. 3 B.L. 140. thinks that the action will not lie. even in case of an alien at law. & even in this case it ought not now to lie for the reason has long since ceased.

An action will lie for enticing away an alien at law because he is entitled to the value of the child's marriage (without special damage being alleged)

The authority of the father ceases when the child
attains the age of 21. but this rule is not 1 BC 453.
correctly expressed. the true proposition is this
A child on attaining the age of 21 has the
right to emancipate himself and on this
principle it was held that where a man was 67 R 252
40 yrs of age but has continued a member of 1 East 526
his father's family all the time it was held 2 East 276
that his settlement followed that of the father

The mother as such has during the life of 1 BL 453.
the father no authority over the children the
authority of the wife to correct the children is
founded on the implied assent of the father

Parent's liability.

A parent is liable for the torts of his minor
children while they live under his government
no further than a master is liable for the
torts of a servant. As parent he is not
liable at all for any tort committed by his
minor children.
He is bound by the contracts of his minor
children as far as masters are liable for the
contracts of their servants except in the single
case of necessaries. a parent is always bound
to supply his minor children with necessaries.
not of course so in the case of master &
servant.

Gardian Ward Certain cases in which by stat parents are subjected for the minor offences of the child. In no case at C. L. is the parent liable for the crimes of the child.

Diff kind of gardian

39. gardian is to be a temporary parent or a person standing in the kind of a parent for certain purposes.

(33)

In Engl? the gardian is the cause of the person and estate of the ward. fiduciary or gardian for the person & one for the estate by statute.

There are many species of gardian according to the English law. At C. L. the kinds of gardian are four 1st Guardianship in minority - This

Co Litt 88a. 11 obtains one when an estate descends in knight service. 2. Co 77. 8. 77 descends to an infant in which case the lord to whom the knight service was due was the gardian. This gardianship continued until the male infant was 21. the female 16 or married.

This gardian was not accountable for the profits & might transfer his gardianship - This species is abolished. by 12. C. 2. 11

Gardian by nature

3 Co 38a. b. any other ancestor may be gardian by nature
6 Co 20b the father has the first claim. the mother second
1. Co 461 &c and if two ancestors are in equal degree
(Co Litt 88b. 11) priority of position of the person gives the preference
note 12 this gardianship extends only to the person
(88b. note 12) and continues until the infant is 21. - This species
again extends only to the heir apparent of the
ancestor.

It has been questioned whether by the English
law a female can ever be guardian by nature
since she can never be heir apparent.

3 Co 38b

Cott 388

Cott 54a

55, 6 n 12

Parents are indeed frequently styled natural guardians
of all their minor children but this does not
mean that they are guardians by nature at
law, but merely that they are such persons as
are naturally most proper to be appointed
guardians by the Chancellor.

Cott 18 n 12

3^d Guardianship in socage. This springs from the
tenure of real property & takes place only when
an wife under fourteen is seized of lands by
descent & held by socage tenure. & this species
belongs to the nearest of the wife kindred
to whom the land came by possibility descent &c.
This kind extends to the person the socage estate descends
& to his incorporeal hereditaments & according to Litt 123
some to his personal property. This continues ad
until the age of 14. & the guardian in socage
is accountable for profits - & he may not
repeal his guardianship

1 Bl 4612

Cott 76

55 n 13 89 n 13

170.

Litt 17

Litt 123

1 Bl 4612

2 Bac 687

Litt 906

note 1. (58 n 11)

(59 note 13)

IV. Guardianship for nurture. This extends to
children not heir apparent. extends to the person
only and terminates at 14. This can be held
only by father or mother of the child
& at 14. These three last species may be
superseded by the appointment of a testamentary
guardian.

1 Bl 461

3 Co 38.

Cott 248 n

Litt 89 n 13

59 n 13

886 n 12

(234)

Gaudian
Hard

Co. att 89

n 15

11 May 703

2 Do 110.

1 Do 112

2 May 129

By St W. Can 2^o of father may by will or deed
attested by 2 witnesses appoint a guardian for
all his children who are inf^t and unmarried.
This appt may be either in possession or remainder.
he may appt one who shall continue guardian
until full age or until any other time comes
that the guardianship extend to the person
and all the property & supersede every other kind
of guardian — No such Stat in Court

This guardianship cannot be assigned Co. att 103 3^o 3^o 3^o
Co. att 89 n 14 a guardian by custom vide
Co. att 89 n 16. There are certain other guardians
known to the English law. If guardianship by
the election of the inf^t. This kind obtains
in this country — This kind obtains only when
no other guardian is provided by law or by
the appt of the father. If an infant is
not to possess lands by knight service. no
land by socage tenure. or being test in socage
but in socage. or being an infant he cannot have
a guardian for nurture and if not his
appt. he can have no guardian by nature he
must therefore have a guardian by election
the mode of choosing is not settled he
may make election before a circuit judge
but it is thought that the judge has some power
to put a veto on his election. this is the
case here at least

Co. att 87

11 May 375.

Co. att 89

n 16.

1 BL 463

430.

Co. att 89 n 16

The age for choosing guardian is not very certain
but it can fix the age at 14.

III Guardian by app^t of the Chancellor the Chan^r by Mark
 never exercises this power when the statute otherwise provides. But
 provided ^{with} a guardian whom he thinks proper. But
 the Chancellor may also remove any & every
 Guardian & substitute another Co Litt 89. 16. 1 BL 463 4 Co. 120.
 1 No 160 1 Cy. ca 260 1 Pres in ch 100. 1 Act 44. D. M. 303.

He may also appoint a temporary guardian.
 He may compel the guardian to give bonds for
 faithful performance & he may dispose of his
 estate &c. the mode of bringing an action

In Court the Chancery & have no such power
 On that has regulated this matter

IIII By the appoint^{ment} of the ecclesiastical Court
 But it is denied that they have a power to
 appoint a full guardian. & it is held, since
 that they have any power except to appoint
 a guardian ad litem. 3 Ke 354. 2 Lev 162.
 3 Bar 1476. 3 Asth 631. Co Litt 131. (b) 132 (a & b)

IV Guardian ad litem. a special guardian
 appointed for a particular suit when an infant
 being deft has no guardian who can or who will
 not appear for him. vide ante Co Litt 89. 16.
 135 b. 3 BL 417 5 Co 536 2 Lev 136.

Guardians
Connecticut

Under our law there is no guardian by
claim, in socage, by testament by intestament
or by appointment of the Chancellor. We have
three species of guardians I Natural guardian
II Guardians by the appointment of Probate
III Guardians ad litem — We have no
guardian for nurture as according to the old
there cannot possibly be any necessity for it.

II. The father is the natural guardian of
all his children until 21. and his authority
1 Rest 1362 extends as well to the person as the property.

On the father's death the mother frequently acts
as guardian but she does not appear to be
guardian de jure for any other person may
be appointed guardian without any process to
remove her — But it also implies this When
it shall so happen that any minor shall have
no father guardian or master the C. of Probate
may appoint —

2 Rest 920 It has indeed been held that the mother in
case of the father's death is natural guardian
to her female children until the age of
choosing — not law. This thing is regulated
by statute & the statute makes no distinction
between males & females.

While the father is alive no other guardian
can be appointed unless he is formally removed
and he cannot be removed except for special
purposes — reasons — & not as a matter of course.

1 Rest 1362 The mother on the death of the father is
frequently appointed guardian by the C. of Probate

III Guardian appointed by the C of Probate & Guardians
 If an infant in Court has no guardian ⁱⁿ Conu.
 father or mother it is the duty of the C
 of Probate to appoint one. if the infant
 is of age to choose a guardian (12 & 14) the
 C must summon him to elect. and if the
 C approves his choice such guardian will
 be appointed.

If the infant neglects to choose the C appoints
 whom it thinks proper.

If a male infant under the age of choosing
 has no father the C may appoint without
summoning the infant at all. The same holds
 undoubtedly of females there can be no necessity
 of summoning one who can have no voice in the
 election.

Our Cts of Probate have the same power of ^{2lost 323}
 removing a guardian as the Chancellor has in
 Engl? — (Construction of our Stat) & Our
 Cts may remove the natural guardian — from
 the guardianship of the estate — In de persona Revers ^{LR}
 or guardian appointed to an infant under the
 age of choosing continues until the full age ^{2lost 282}
 of the infant unless the infant on attaining the 286.
 age of choosing nominates another to the
 acceptance of the Court.

In some the same Cts of Probate are required to take
 security from all guardians appointed by them for the
 faithful discharge of their duty & for accounting when
 the infant is of full age or before if called upon by the
 judge & probate and this bond must be with
security in case the infant has any estate

L Ward

Rule the same with respect to a bond in Engl^d
 Co Litt 114a All guardians in Engl^d except governors must acc^t
 In Engl^d the usual mode of bringing a guardian to
 21403 account is by bill in equity & the C's action of
 134679 acc^t will bind him but it is not in Engl^d
 157 gently sufficiently remedial,
 The usual remedy in limit is by an action of account
 149 ca 137 for here no action of account is as remedial as a
 260 bill in equity in limit — In Engl^d a guardian is
 2040367 frequently required to account annually and indeed
 27002 679. after the estate & the wife is in danger he may
 be carried to account at any time.

1 Root 512 But in Conn^t the guardian appointed by Ct of
 probate cannot be sued by the infant until

149 ca 261. In Engl^d Chancery will remove a guardian for any
 12 Nov 7030 sufficient cause for misconduct or where there is
 1 Bl 403 reasonable ground to apprehend misconduct
 204077 indeed in these cases the Chancellor exercises
 1 Vern 442 his discretion, See N. 480. 1096.

32th 399 No guardian except parents are bound at their
 1 Vern 233 own expense to maintain the ward. but a parent
 1 Bro 237 unable to maintain the ward apply the ward's estate to her support.
 Toller 327 but in Chancery, if the parent is poor he may be
 1120. 60. ware of the Chancellor apply the whole or part of
 3 Bro C 40 the ward's estate to the education of the ward
 32th 50. but this will not be granted except in cases
 4 Bro C 227 of clear necessity
 Toller 328.

1 Bro C 260 But a widow having married a second time
 1120 1106 is not bound to support her children of her
 2140367 former marriage. She therefore being guardian
 may apply the infant's estate to the support of
 them

It has been said that for any thing more than ward necessary & ordinary expenses the parent receiving 21 Jac 353.
 guardian may borrow the expense from the 21 Hen 137
 child's estate. but this rule is now denied 255.

But if the parent is poor the chancery may 3 Jac 399
 allow the parent to apply the child's property, 21 Hen 136
 not otherwise. (ante) No genl rule can ~~be~~ be
 laid down - It depends upon the circumstances
 of each case. -

If the ward's creditor or a compromise accepts 2 Jac 687
 from a guardian less than is due the ward not 2 Jac 245.
 the guardian is benefited by the discount. The guar.
 is trustee & is not allowed to speculate -
 The guardian receiving the ward's property is considered 21 Hen 136
 in equity as trustee. and if a stranger tortiously takes 21 Hen 136
 on the inf's land & take the property he is liable in 21 Hen 136
 equity as a trustee or guardian. This cannot be gone 21 Hen 295.
 if one thing enters on the land of an adult. he
 may if he enters on an inf's land of course be also
 treated as a trespasser.

And when a stranger dispossessed an infant and kept 1 Jac 280
 possession after full age of the inf't the Court has 2 Jac 687
 that the dispossessor must be treated as a trustee
 during the whole time.

Gardian of an inf's mortgage man in Court
 on payment reconveyance - May when inf't is at 21 Hen 136
 Court make a valid deed of partition with administrators

Case "Ward" Where a guardian has money of an infant in his hands he must pay interest for it unless he can show that he could not advantageously and safely lend it on interest.

1. Chica. 1867 And where a guardian has personal property of the infant he is in peril obliged to apply the personal property to the payment of the ward's debts.

2. Penn. 279. And where a ward's estate is mortgaged it is the duty of the guardian in possession to apply the profits to the discharge of the mortgage & if there be a surplus to the mortgagee.

1. N.H. 435.0. A guardian has no lawful right to vest the ward's money in land without advice from a Ct of Chancery & if he does it, the ward on full age may take the money & gets on the land he can't have both. This right of election is personal to the ward. — so if the ward dies without making election his Ex^r will have the money & int. & his heir at law can't claim the land —

guardian by report to sell the ward's land & apply the money to the ward's personal property

2. Tex. 69. In such the guardian is accounting for the ward's money is bound to pay only principal & interest but if the money is appropriated in a trade the ward may have his election to take the money & the interest or his portion of the principal & profits of the trade.

Parent & Child (V. 5)

The English Chancery exercises a power over the marriage of wards unknown here where the ward is under the guardianship of parents Chancery will not really interfere

Tabl. 58.

2 P. M. 111.

562.

1 Ves. 160.

And where there is a mere apprehension that the ward will marry to his disparagement tho' 2 P. M. 112. with the guardian's consent Chancery will issue 3. Att. 304. an injunction to secure the person of the ward. Tabl. 58.

If a male ward marries the guardianship over his person ceases - tho' not over his property. Recor. B. R.

The power of a guardian over a female ward is sometimes said to be determined by her marriage. his power over her person undoubtedly ceases on marriage but if the husd. is not of full age his power over her property is not determined. — There is s. to be an usage in this state for the guardian to bind his ward an apprentice. The parent has this power, sed quare further than the settlement of infants. & settlements generally.

1 Ves. 160.

Sp. R. 112. if
of age himself
the facts
becomes guardian

Our stat. law has made special provision with regard to obviating original settlements

By our stat. no foreigner can gain a settlement here unless he is admitted by a vote of the town or by the select men & civil authority or by being appointed to and executing some civil office. (Note By foreigner is meant one not a citizen of any of the states)

No inhabit of any other state can gain a settlement here unless he has some one of the three qualifications before mentioned or unless he has real property in the state in fee to the value of \$35. dollar. Or then unless he has

Settlement

owned the estate & resided in the town at least one year,
 No inhabitant of one town in the state can gain a settlement in another town in the state unless he has one of three before mentioned qualifications or has real estate in fee of the value of \$500. or has resided in the town six years (paying his taxes) & not being chargeable to the town - Within this period of six years he cannot be removed unless he becomes chargeable -

1 Bl 362

Salk 433

Salk 485

Comp 304

Salk 367

Salk 427

Salk 467

Salk 433

Comp 364

Comp 367

Settlement may be acquired by birth. the place where a child is first known to exist is prima facie the place of his settlement. What proof that the parents of the child have a settlement in another town settles that presumption & the child will be settled where the parents are.

And in all cases if neither father nor mother have a settlement in the state the child born here is settled in the town where born or between left towns in the state.

1 Bl 368

But in case of legitimate children the presumption the presumption that a child is settled where it is born may be rebutted & in Conn in case of illegitimate children (post 243.)

Settlement may be acquired by parentage Settlement
 the settlement of the father of a legitimate child 141 303
 is the settlement of the child - & the settlement 141 528
 of the child regularly follows the settlement 375 114
 of the parent. - Post 243. 141 371 2

52a 169

141 202 360 1600.

But this rule in Engl? holds in full in Engl? only.
 as to legitimate children but in Conn. illegitimate 141 302 3
 children are settled with the mother not with the 141 155.
but also father even after an order of filiation

(A ward gains no settlement by residing with its 141 131 2
 guardian - Marlboro' v. 2 Ch. on 2 Conn. R.) 2 Conn. R.
 A settlement acquired by parentage is called a 375 116
legitimate settlement.

The settlement of legitimate children not emancip 375 114 16
ted continues to follow that of the parent. (ante 243) 475 116

141 479

141 479

141 270 638.

141 488 831. 141 202

On the father's death the settlement of the children does not
regularly follow the settlement of the mother except 141 479
 when she acquires a new settlement by a second 141 372
marriage - for neither she nor her husb? are parent 141 473
bound to maintain them & the settl^{mt} follows the marriage 141 6.
 such children if they have no property - settled
by deed or will by the parents to the children
belonging.

If a widow marries having children under 7
 they must reside with her for nurture but if 141 479
 the widow & her hus? do not support the child 141 528
 has no property or the parents to whom the child 141 259
 belongs must pay for its support with its mother - 141 395
 141 94

Settlement

1 K 521:0
 Bunsca 370
 1 R 303

It is possible to have two settlements at one and the same time. True it is that one may have the ~~residence~~ qualification in several towns & his settlement in those cases is in the town where he happens to be at any particular time.

A settlement cannot be lost except by the acquisition of a new one.

An indentured man may in certain cases gain a settlement of his own, by commorancy & when he acquires such a settlement his original settlement is lost.

3 J R 110
 1 R 364
 3 J R 910

The very act of gaining a settlement by an indentured man emancipates the infant & is served from his father's family -

1 R 10:2 A bond of an apprentice man gains a settlement by commorancy he may in England

When a minor child ceases in contemplation of law to belong in the character of servant in the family of his parents he is emancipated & cannot gain a new settlement by a change of settlement in the father

3 J R 114. 355.
 Stra 430
 811.
 8 J R 479
 1 Mils 183.
 Bunsca 370
 638. 506.

When a child emancipated even though he continues to live with his father's family does not follow the settlement of his parents

1 Stat 526
 57 R 553

1st A person may be emancipated 1st by attaining full age. 1 Will. 43. 3 D R 356. Dan. let ca 270.

2nd By marriage. A person under age is emancipated by marriage. 1 Wm 438. 531. 5 D R 583. 3 S 116. 1 East 520. Dan. 270.

3rd By gaining a settlement of his own. In 37 R 356. he cannot gain such a settlement while being served from his father's family.

4th A wife may be emancipated by contract 35 R 144 any relation inconsistent with his remaining 118. 356. under the care & government of his parents. 1 Will 460. 1 East 520. as a soldier.

The term emancipation in these rules means merely an exception from personal servitude in the father's family.

But full age is not of course an emancipation 67 R 252 it merely gives the power of emancipation. 1 East 520. till he is actually emancipated he follows 2 S 270 the settlement of the father or maintaining parent.

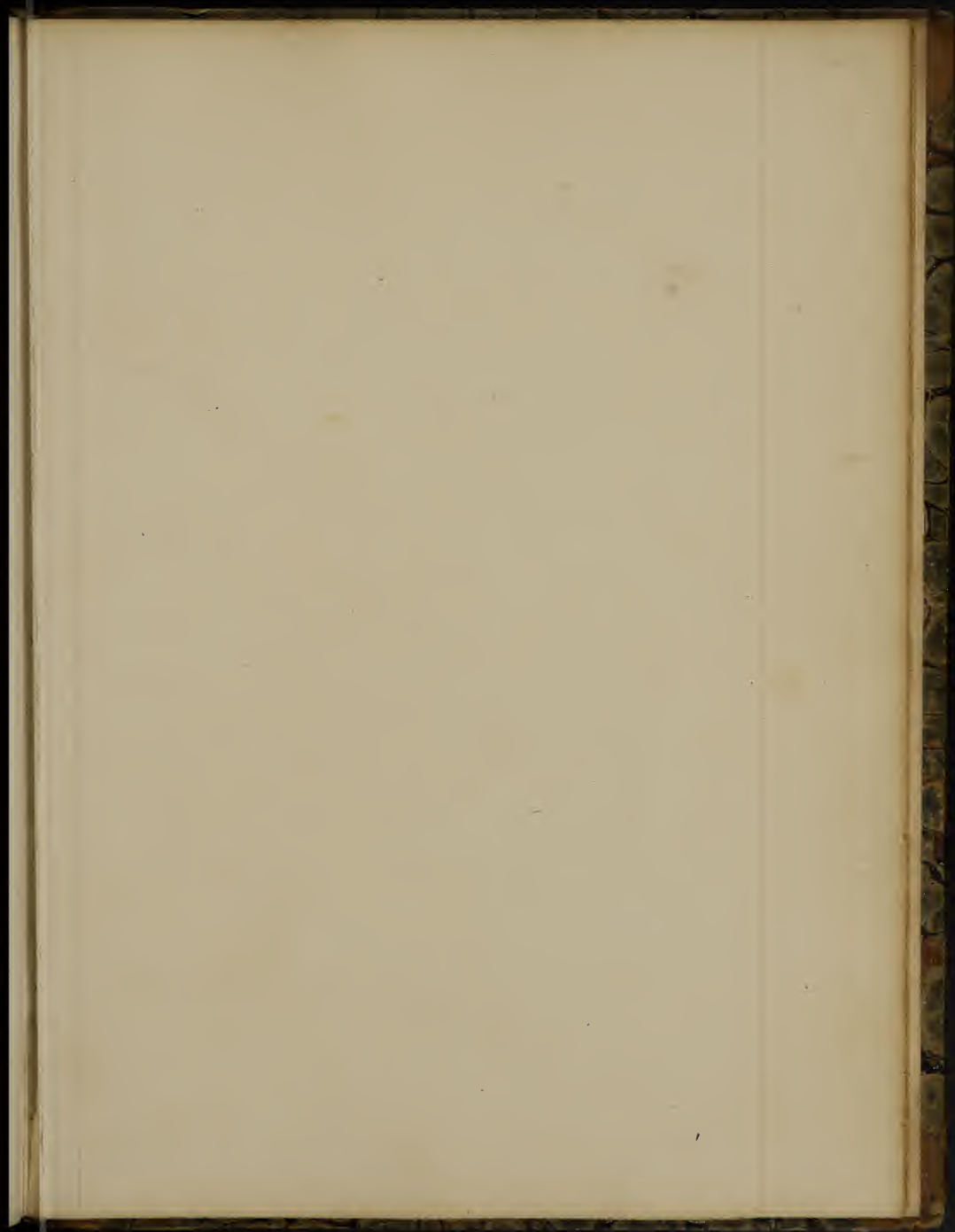
3rd A settlement may be acquired by marriage a woman by marriage loses her original settlement & acquires the settlement of the husband. 1 East 544. 1 R 363. 1 East 102. 371. 122. 1 East 520.

Stria 1444
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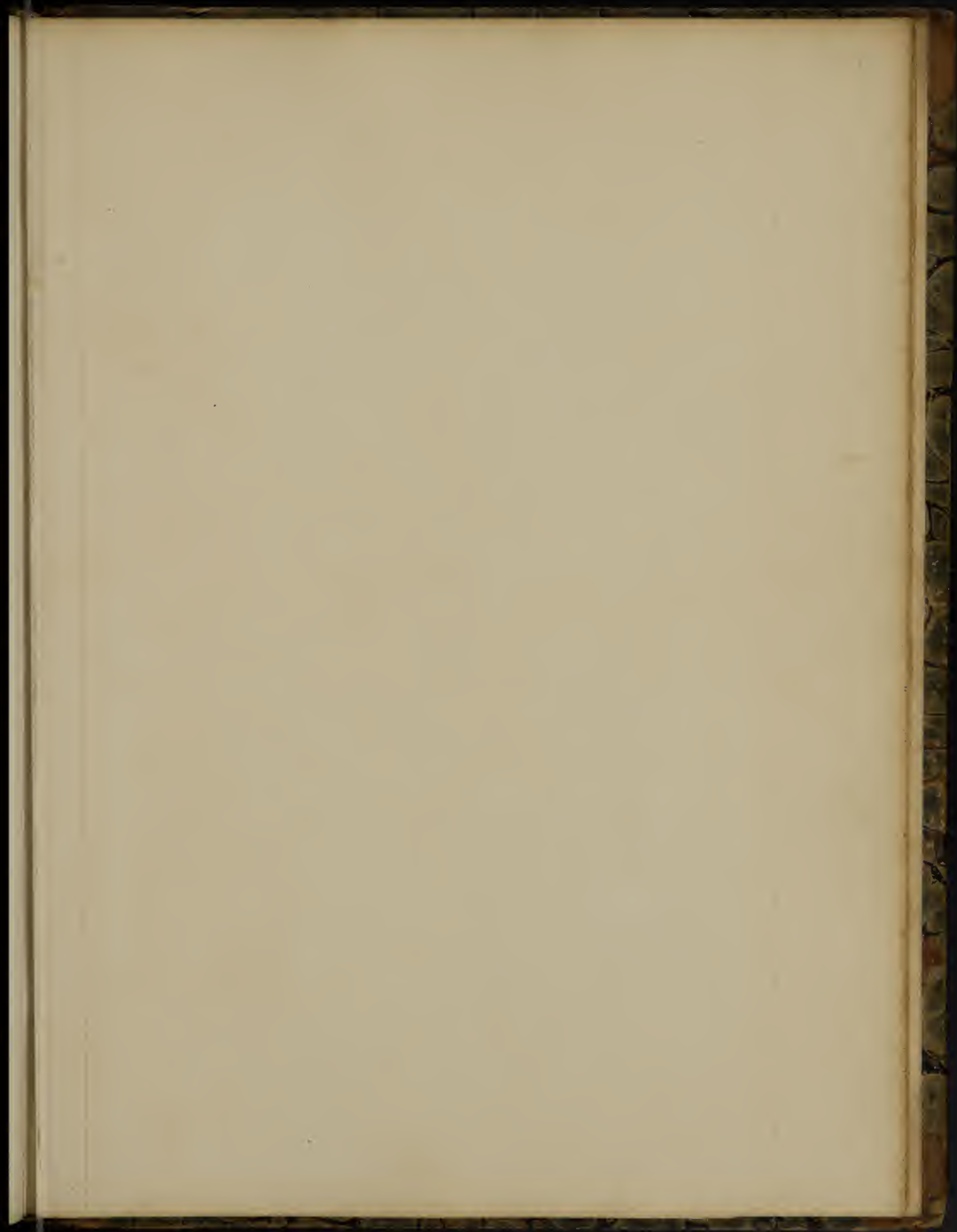
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1200 132

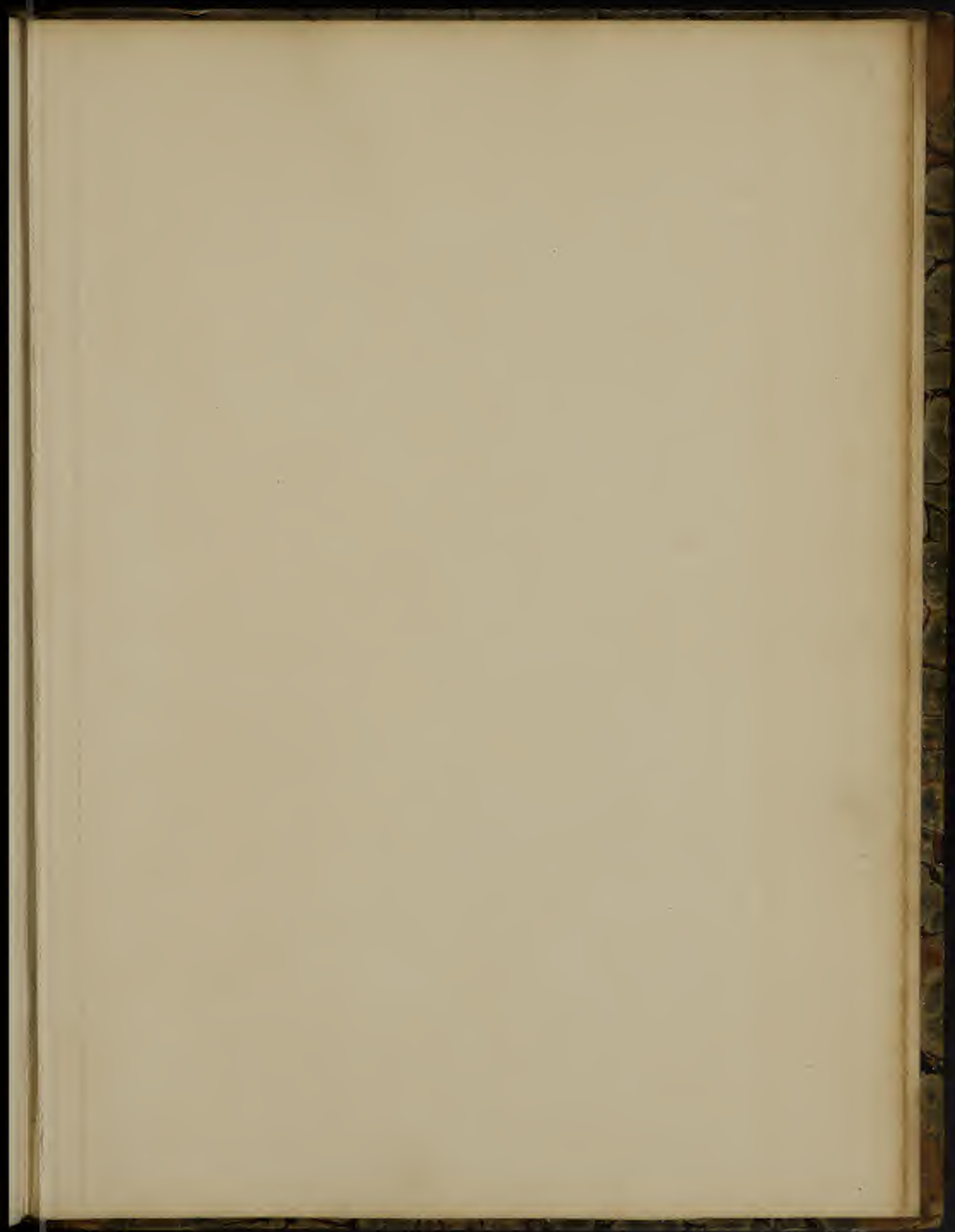
And it was formerly held that if the husband has no settlement the wife's settlement is suspended during the husband's life, & reverts after his death. But this rule is now changed, & her settlement is now held to continue if he has no settlement. - Dun L Ca 367, 370, 371, 373, 132. - Of course her children during the marriage are settled ~~with~~ in the place of her settlement. - ~~See also 1200 132~~



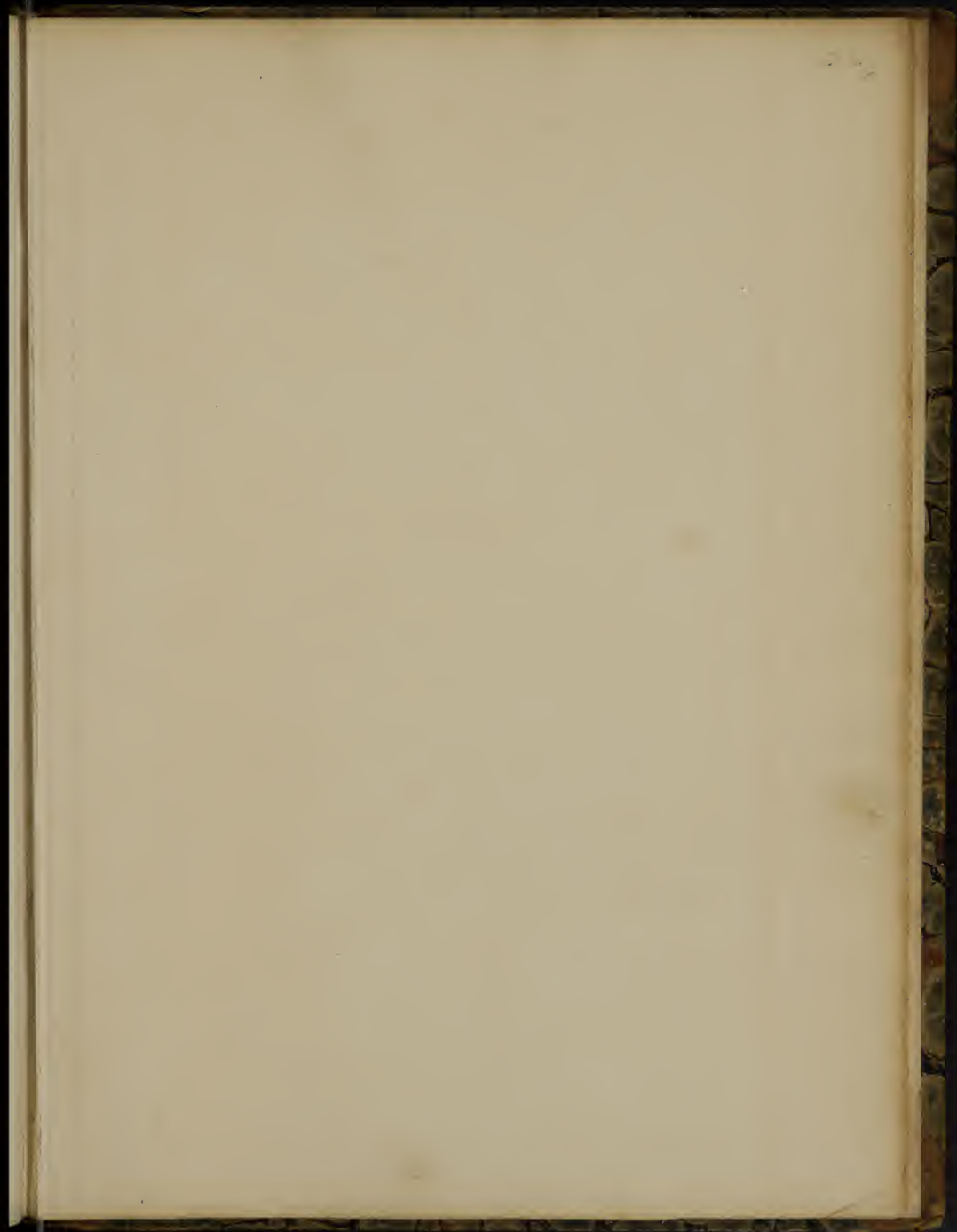
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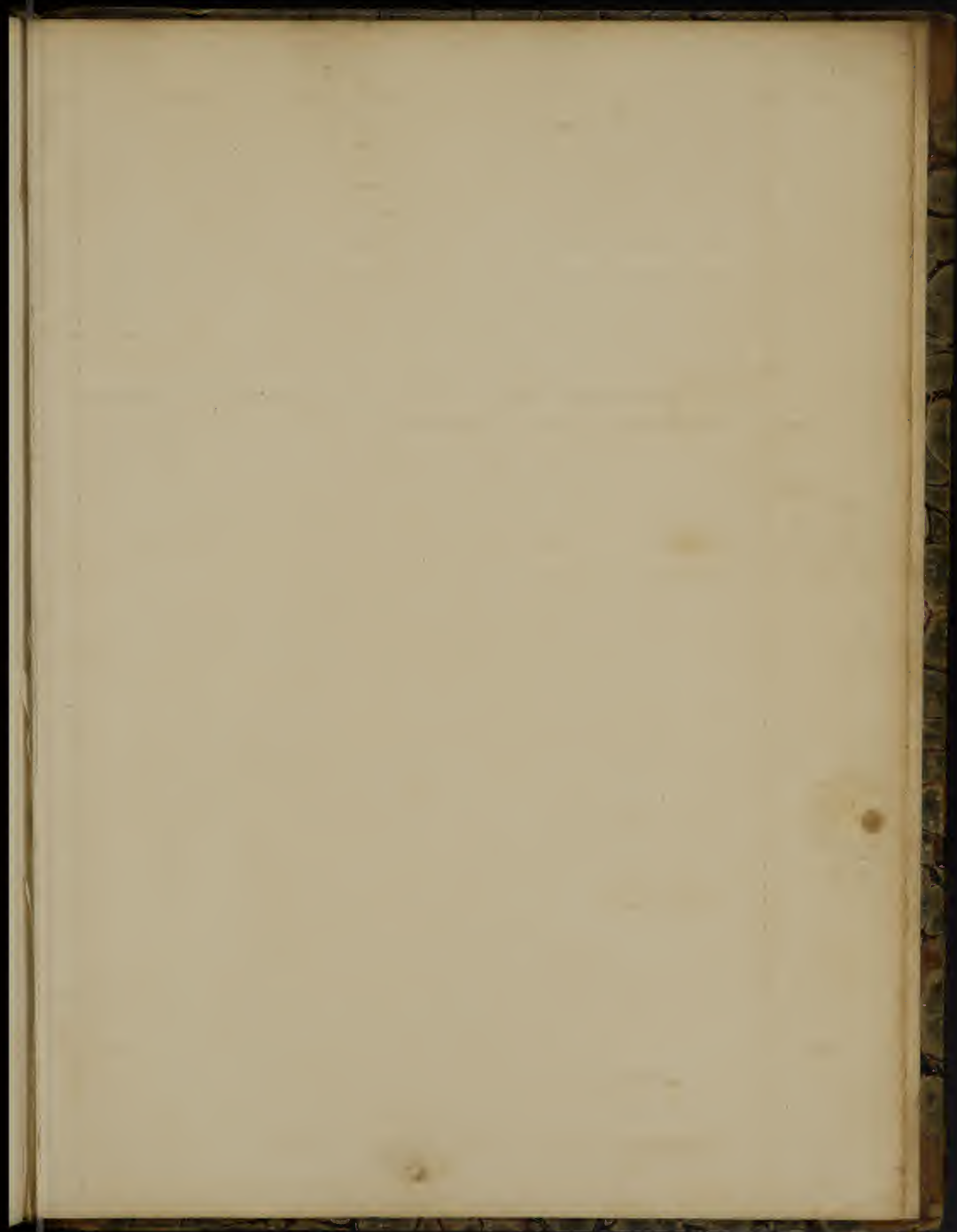
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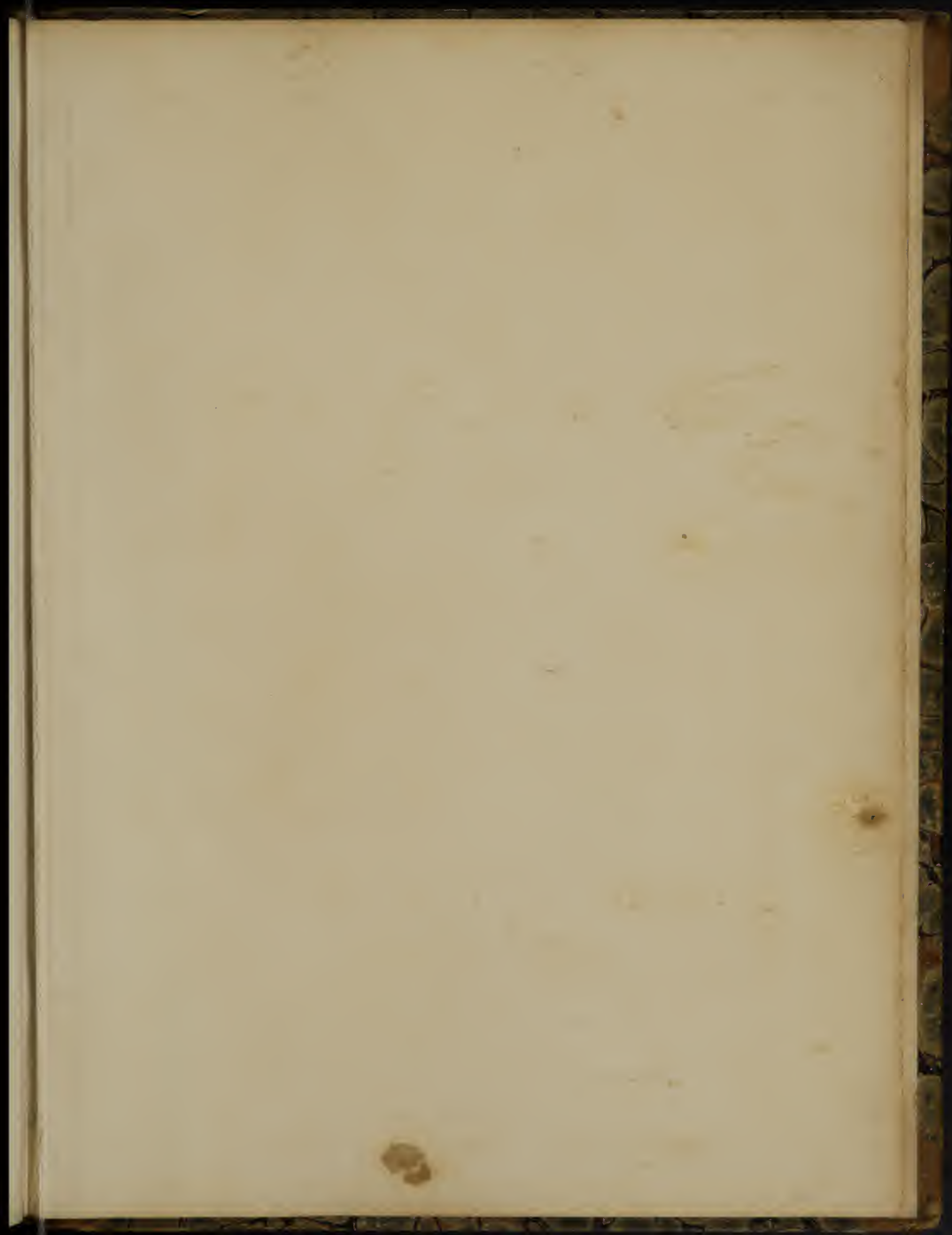


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